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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 510

C. H. COCHRAN, PETITIONER,

vs.

THE STATE OF KANSAS AND MILTON F. AMRINE, WARDEN, KANSAS STATE PENITENTIARY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

PETITION FOR CERTIORARI FILED AUGUST 13, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN DISTRICT COURT OF LEAVENWORTH COUNTY, FIRST DISTRICT OF THE STATE OF KANSAS

No. 29059F

In the Matter of C. H. Cochran, Petitioner, for the Writ of Habeas Corpus

NOTICE OF APPEAL

To the State of Kansas, Plaintiff Herein, Attorney for Plaintiff, M. F. Amrine, Warden Kansas State Penitentiary, and the Clerk of the District Court of Leavenworth County, Kansas:

You, and each of you, are hereby notified that the petitioner, C. H. Cochran, appeals to the Supreme Court of the State of Kansas from the judgment of the Leavenworth County District Court of Kansas, rendered against him on the 11th day of December, 1940, in the above entitled cause, that the cause above was dismissed without a lawful hearing, setting forth that facts were not sufficient to grant the Writ.

C. H. Cochran, Attorney in own defense.

December 20, 1940.

Service of the above notice is hereby accepted this 31st day of December A. D. 1940.

Walter Biddle, Attorney for Respondent. ——, Clerk of the District Court, Leavenworth County.

[fol. 2] IN DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

No. 29059-F

In the Matter of C. H. Cochran for a Writ of Habeas Corpus

ORDER DENYING APPLICATION FOR WRIT OF HABEAS CORPUS

After examination of the petition in the above entitled action, I find that the petition does not state facts sufficient

to warrant the issuing of a writ of habeas corpus, and the request for such a writ is therefore denied.

J. H. Wendorff, Judge.

December 11, 1940.

Endorsements: Notice of Appeal and Journal Entry of Judgment. Filed June 2, 1941. E. E. Clark, Clerk Supreme Court.

[fol. 3] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 4-5] [File endorsement omitted]

IN SUPREME COURT OF KANSAS

35156

C. H. COCHRAN, Petitioner,

vs.

THE STATE OF KANSAS, and MILTON F. AMRINE, Warden Kansas State Penitentiary, Respondent

APPLICATION FOR THE WRIT OF HABEAS CORPUS—Filed January 8, 1941

C. H. Cochran, Per Se:

[fol. 6] Comes now Charles H. Cocharan, a citizen of the United States of America, who respectfully represents and shows to the court that he is now unlawfully immured in the Kansas State Penitentiary at Lansing, Kansas where he is being unlawfully restrained, held to involuntary servitude and deprived of his liberty by the State of Kansas and Milton F. Amrine, Warden of the Kansas State penitentiary, duly Authorized agent of for the State of Kansas and Respondent hereto, and that the cause or pretense of cause for illegally immuring and unlawfully restraining, holding to involuntary servitude and depriving your petitioner of his liberty is a mit·imus or commitment issuede against your petitioner and authorizing his imprisonment for the term of "Life" by the twenty-fifth (25) Judicial District Court

of Kansas, and that the aforesaid mittimus or commitment is now and has ever been wholly, Null, Void and without force for the following reasons: Viz:

I

The record shows that any jurisdiction the twenty-figth Judicial Court of Kansas m-y *a*of had to issue any mittimus or commitment against your petitioner was procured thru the reckless contrivance in the pretense of a trial which in and by itself, deprived your petitioner of every right secured to him by the State and Federal Constitution and precluded from the action itself both the fundamental conceptions of justice and its requirements of "Due process of Law."

II

The record shows that the trial court went beyond the bounds of judicial discretion by over-ruling your petitioner's motion in the court or without any hearing at all.

[fol. 7]

III

The record shows that the duly authorized officers and prison officials exercised unlawful authority by surpressing your petitioners appeal documents in a manner violative of their lawful duty and contrary to the statutess of the state of Kansas, to thwart, obstruct and deprive your petitioner of his lawful rights of appeal.

IV

The record shows that your petitioner was, after incarceration, *was* arbitrarily denied by prison rules and the arbitrary acts of the officials of his lawful right of his appeal and was denied the right to secure a transcript from the trial court. Arbitrarily denied hearing of his appeal in the Supreme Court of the State of Kansas and denied him the right to file his written case in the Supreme Court of the State of Kansas by E. M. Stubblefield, Deputy Warden, Lacey M. Simpson, Warden who the records shows refused your petitioner to mail abstract and brief to the Supreme Court, and arbitrarily suspended Habeas Corpus.

V

The record will show that your petitioner has ever been consistantly denied and deprived of the right to "Due

process of Law," by the Courts and the duly authorized officers and agents of the State of Kansas.

VI

The records will show by the records itself, that all proceedings previ usly undertaken by your petitioner to bring his casue within the scope of the requirements of "Due process of Law" for judgment thereon according to the prevailing law and the fundamental conseptions of justice have been arbitrarily dismissed by the court of the State of Kansas without recourse to the record which, so far as your pe-itioner is informed, has never transcribed, upon the unfounded contention, guess or belief of the respondent that your petitioner was or may have been convicted by an orderly trial within the concept of the fundamental requirements of "Due process of Law."

VII

The records will show that the courts of the state of Kansas and the duly authorized officers and agents of the state of Kansas are exercising unlawful authority over the person of your petitioner for the reason that any and all punitive authority against your petitioner, now being exercised by the aforesaid court, officers and agents was obtained by methods contrary to and into and in violation [fol. 8] the constitutional requirements of "Due process of Law." Therefore, your petitioner respectfully moves and prays the Supreme Court to issue upon the said Milton F. Amrine, Warden of the Kansas State Penitentiary at Lansing, Kansas the prerogrative *Writ of Habeas Corpus*, That your petitioner may come forth and show to the Court that he is and has been deprived of his fight to "Due Process of Law," and is being held to involuntary servitude and deprived of his liberty in violation of his constitutional rights, in violation of the mandates of the constitution of the United States and in violation of the moral code of universal justice.

Very respectfully submitted. By C. H. Cochran,
In form Pauperis.

[fol. 9] IN SUPREME COURT OF KANSAS

In the Matter of the Application of C. H. COCHRAN for the Writ of Habeas Corpus

PETITIONERS BRIEF AND AUTHORITIES

Your petitioner comes with his cause, the Supreme Court for redress of the injuries which have been inflicted upon him by the unlawful usage by the power of State, the deprivation of his constitutional rights and the denial of a trial or hearing within the purview of the fundamental conceptions of justice. Your petitioner respectfully contends that the officers and the agents of the State of Kansas willfully deprived him of his constitutional right to compulsory process for witnesses for his trial.

Your petitioner respectfully contends that the United States Supreme Court in Carter v. Texas 177 U. S. 442, 447, 44, L. Ed. 839, 841, 20 S. Ct. 687; Rogers v. Alabama, 192 U. S. 226, 231, L. Ed. 417, 419, 24, S. Ct. 257, and Chicago B. and Q. R. R. Co. v. Chicago 166 U. S. 226, 233, 41, L. Ed. 979, 983, 17 S. Ct. 581, deals specifically with such conduct on the part of the State officers as constituting State action within the purview of the 14th amendment and inconsisitant with the requirements of "Due process of Law," to the same effect please see: Herbert v. Louisiana 272 U. S. 312, 316, 317, 71, L. Ed. 270, 273, 47 S. Ct. 103, 48 A. L. R. 1102.

Your petitioner respectfully contends that it was error for the court to overrule his motion for new trial in the absence of your, petitioner and to his knowledge without the presence of a court reporter, without hearing all of the movants evidence thereon or any record of such evidence as charge- against him was deprived from evidence from the officers themselves which acts by law are defined as "Compounding a Felony."

Your petitioner respectfully contends that it was in violation of the moral code of universal justice for the State, through its court, to proceed further against your petitioner until a full hearing on his motion was had and recorded. Your petitioner respectfully contends that he was entitled to his appeal and that acts of the State Officers and representatives in sup-ressing and impounding your petitioners [fol. 10] appeal documents, in order to deprive him of his timely appeal, constituties a direct, recorded denial of the

constitutional requirement of "Due process of Law," and a violation of your petitioners constitutional rights to redress of his injuries by "Due process of Law", 18th article of the Kansas Bill of rights—Frank v. Mangum 237 U. S. 309, 335, 59, L. Ed. 969, 983, 35 S. Ct. 582; More v. Dempsey 261 U. S. 86, 90, 91, 67 L. Ed. 543, 545, 546, 43 S. Ct. 265. Your petitioner contends that after he had struggled for over 2 years to get his motion out of the trial court and up to the Supreme Court of Kansas the limit had expired for his appeal and that your petitioner brought up the violation of "Due process of Law," before the court in form of the Writ of Habeas Corpus which was denied without a hearing.

Your petitioner respectfully contends that the state deprived him of due process of law, by not waiting and postponing trial to subponea his witnesses which wholl deprived your petitioner of his opportunity to be assured a fair trial which met the requirements of "Due process of Law." Please see: Roller v. Holly 176 U. S. 398, 20 S. Ct. 414; Standard Oil Co. v. Missouri 224 U. S. 281; Scott v. McNeal, 154 U. S. 34 and Robb v. Connolly 111 U. S. 624, 637, 28 L. Ed. 542, 4 S. Ct. 544.

Your petitioner respectfully contends that the state of Kansas, by and through its duly authorized officers, agents and representatives is illegally holding your petitioner to involuntary servitude and depriving him of his liberty upon pretense that your petitioner was duly convicted by a fair and impartial trial, of the Commission of a crime whereas the record plainly shows that his conviction was contrived through the pretense of a trial which in truth was but used as a means of depriving your petitioner of his liberty through a deliberate deception of the court, and jury by the presentation of false, unfounded, prejudicial inciting allegations of circumstancial evidence against your petitioner while willfully concealing the true pertinant evidence in the premis and unlawfully suppressing the testimony of the material witnesses to the crime charged which shows the innocence of your petitioner.

Your petitioner respectfully contends that he will show to the court by pertient and admissible evidence, that he has been arbitrarily denied the right to any lawful hearing of his cause by the Kansas courts and that he has exhauste every lawful remedy available in the Kansas jurisdiction to persons so situated as your petitioners Circumstances,—

Escoe v. Zerbst 295 U. S. 490, whereas your petitioner respectfully prays the court to issue upon the said Milton F. Amrine, Warden of the Kansas State penitentiary at Lansing, Kansas and respondent thereto, the Writ of Habess Corpus, that your petitioner may be relieved of further unlawful restraint and restored to his liberty.

Very Respectfully Submitted, C. H. Cochran.

[fol. 10a] In United States District Court for the District of Kansas, First Division

In the Matter of the Application of C. H. Cochran, for the Writ of Habeas Corpus

Petitioner's Statement of Facts

Abstract

On April 13th, 1933, the person of your petitioner, C. H. Cochran was taken by force and transported against his will and without his consent or any lawful warrant authorizing his arrest or restraint from Harper County to Sumner County, Kansas by the states Officials and that after the petitioner was lodged in the Sumner County jail, a warrant charging the petitioner with the crimes (1) Uttering and (2) passing a worthless check.

The record shows that on the 27th day of April, 1933, the petitioner was given a preliminary hearing and bound over for trial in the Sumner County District Court.

The record further shows that on the 27th day of April, 1933, the petitioner ask to have the following witnesses subpoenaed for a jury trial: Earle Peoples, Truck driver for the petitioner who was, at the time of his arrest the owner and operator of the Cleaning (dry) Establishment at Harper, Kansas.

Violet J. Cochran who was cashier of the firm and in such capacity, received from the driver Peoples as a part of his daily receipts, the check which your petitioner was charged with writing and passing.

Buck Heron, who personally knew the person who uttered the check involved.

Gladys Silvers, a friend of the party known as A. J. Messenger, the person who uttered the spurious check.

Elmer Madsen, a garage owner at Anthony, Kansas, who had heard the said A. J. Messenger admit that he uttered the spurious check with the intent to defraud an express the opinion that the petitioner could not be sent to the penitentiary for a check that was for less than $20.00 Dollars.

Mrs. Ada Peoples, who questioned the value of the check when her husband (Earl Peoples) turned it in with his daily receipts.

All of these material witnesses were excluded from the list to be subpeonaed for the trial and were not present.

The trial of your petitioner was pos-poned fron the 8th day of May, until the 15th, day of may 1933, without notice to your petitioner.

[fol. 10b] On the morning of May the 15th, 1933, about 9:30 A. M. and seated at the counsel table with his counsel Mr. Harry B. Davis of Anthony, Kansas. When the County Attorney called the petitioners case he stepped to the group of men seated in the chairs for the proposed jurors and the man all seated themselves in the jury-box all except one, he retired from the courtroom. The County Attorney then addressed them as jurors. Your petitioner ask then to his lawful examination of the jurors, this was denied. The County Attorney passed these remarks to the jury: Gentlemen of the jury, this man is an ex-convict and has been convicted several times before for forgery, (Your petitioner has never been convicted for forgery in any other state of the United States, or at any other time for the crime of forgery) and that the prisoner has been convicted from this County before. At this point your petitioner ask again that he be permitted to examine the jury, this was denied. He asked if his witnesses had been subpoenaed. His attorney said that they had and that they were somewhere in the courthouse, or that they would be there.

The County Attorney abused the prisoner with verbal statements to the jury, sneered and said to the jury that this man is guilty and is trying to put the state to the expense of a trial.

Again the petitioner ask to examine the jury, the judge told your petitioner to set down that it was not necessary to examine the jury, and your petitioner ask his attorney to stop the trial, to this he replied, that there was nothing that he could do as the court was determined to convict you and would not listen to him.

While the defense counsel was not an able counsel, he permitted the "railroading" of your petitioner by not offering objections to the procedure of and the conduct of the court.

At this point of the opening statement, the County Attorney again sneered at the petitioner and walked to the table and took from his "Brief-case" a sheave of papers and holding them up to the jury and again told the jury that the petitioner has been by this evidence (Holding up papers to the jury) convicted many times for the crime of forgery and he as the county attorney wanted the prisoner found guilty and put where he belonged. To this the court could not show any record of any previous convictions for the crime of forgery or any other lawful conviction in a penitentiary other than the one of 1928 from the county of Sumner County, Kansas.

[fol. 10c] The State call its first witness, E. E. Evans, the plaintiff. He told the court that he never at any time notified the petitioner that the said check had been "Protested." The next witness was the brother-in-law of the Plaintiff, his testimony said that he never tried to notify the petitioner of the valueless check and in no place in the testimony of these two did it co-inside with each other. Then followed several bankers that tried to indentify the hand-writing on the check, failed. Never at any time did the state show that the check was written by the petitioner. At no time did the state introduce a qualified hand-writing expert to show any simularity or evidence that the petitioner wrote the check. The plaintiff's testimony failed to prove that the petitioner wrote the check, or had any criminal knowledge or intent whatsoever in the matter. The state rested its case and recessed.

Mr. Davis, the Counsel for the defense then took the stand did testify with deliberate knowledge it was false and incriminating to your petitioner.

Your petitioner ask to take the stand in his own behalf, this was met with rigid opposition and denial. The petitioner was severely reprimanded when he ask for his rights, a disturbance issued, the court told your petitioner to set down, the defense rested its case.

The state opened its closing argument with a compromise and abuse to your petitioner with statements that were false and misleading, that the petitioner had been convicted previously for the crime of forgery (this the state did not

show and could not show to the jury) Never at anytime did the County Attorney show the jury any evidence or to the court that the petitioner had knowledge criminal or otherwise the check was worthless, after about 15 minutes of this abuse the state closed it's argument.

A verdict of guilty was returned on the second count (Passing of check) of which not one iota of evidence was introduced to show or sustain such a verdict. Your petitioner ask the defense counsel to give notice of appeal. Motion argued, if argued at all, in the absence of your petitioner.) (Later another notice was sent to the trial court of which no receipt was received.)

A statement was made by the sheriff Jeff Harris, of Sumner County, while enroute to the State Penitentiary, om the presence of two other convicted men as follows: Harry Snyder and Sydney Guy, that he had seen lots of cases tried and received "Rotten trials" but I never saw such a "Frameup" and dirty a trial as that one of yours." [fol. 11] Your petitioner then set out to secure evidence to prove his innocence, to which he secured an affidavit and confession from the man that wrote the check with the intent to defraud the firm of $12.60 * * *.

The petitioner then wrote and moved the trial court to reopen the case of State of Kansas v. Cochran on the discovery of new evidence to which the court never acknowledge the receipt of the motion. Copies of the original affidavit was confiscated. The State set about to block and forcibly restrain your petitioner from filing his appeal. Your petitioner ask that he be permitted to secure his transcript this was denied by the state authorized officials and agents and by the prison rules. The time your petitioner's appeal limit had expired and under similar restraint your petitioner was denied the right to file a petition for Writ of Habeas Corpus. Eventually the petition was filed in an unusual way, this petition was #32802, setting up several questions on the trial of your petitioner. This petition was denied by the state Supreme Court without so much as any kind of a hearing, and was arbitrarily denied and a decision was written without any lawful defense in the said case. Later a statement of facts was sent to the Supreme Court of Kansas to this reply was it was a serious charge to make such a statement. I moved the Supreme Court to rehear the petition and this was denied. The Supreme Court ask the Attorney General to investigate the

statement of facts to which your petitioner made a rigid objection. All of the action and motions were struck down without so much as a hearing. The petitioner ask the Supreme Court to certify the petitioner's petition, this was denied. A Notice of appeal was tendered to the Supreme Court Clerk, this was struck down.

The officers and agents of the State of Kansas set up another blockade and confiscated the papers and documents of your petitioner.

Your petitioner has evidence that the Warden, Lacy M. Simpson, E. M. Stubblefield Deputy Warden, A. J. Graham, Assistant Deputy Warden, A. S. Foulks, Pardon attorney, Board of Administration and other Authorized officers, and agents of the State of Kansas assisted in the blockade for redress.

Two prison Welfare workers who sought to help the petitioner was cautioned not to carry out papers for the petitioner or file any in the courts.

The following letters are from the Supreme Court of Kansas, The Attorney General's Office and the Board of Administration.

[fol. 12] Chas H. Cochran:

The letter yoor wrote to the U. S. Dept of Justice K. C., has become misplaced. If your will re-write it we will see about mailing it.

Lacy M. Simpson, Warden.

The above letter refer-ed to was wrote to the United States Department of Justice for the aid in the restrainment against your petitioner.

Letters addressed to attorneys was sestroyed and sent back to the writer and your petitioner.

Letters addressed to the petitioners mother for aid was destroyed and never mailed. Some were returned and petitioner were taken out. C. H. Cochran #3608. You will have to change this letter if you want it mailed. Under the minutes of the Administration all matters pertaining to Habeas Corpus must be refered to the Board. That was what was done with your motions.

Lacy M. Simpson, Warden.

The letters refered to above were written to the Clerk of the United States District Court.

The following letter is from Chief Justice R. A. Burch of the Supreme Court of the State of Kansas;

I have your letter of June 1, asking that I take some action with the reference to the conduct of Mr. Lacey Simpson, Warden of the State Penitentiary, and the Hon. A. S. Foulks, Pardon Attorney, relating to enforcement of an order of the United States District Court of the Judge thereof.

I have no authority and the Supreme Court of the State of Kansas has no authority to enforce to orders of a Federal Court.

Also, I have no authority and the Supreme Court has no general authority to gegulate management of the affairs of the State Penitentiary.

Yours Very truly, R. A. Burch, Chief Justice, Supreme Court of Kansas, Topeka, Kansas.

The petitioner wrote the Attorney General's office several times and ask that he assist your petitioner to secure his rights in the courts and stop the interference of the Prison Authorities. On September 2, 1937 a response from the Attorney General's office reads as Follows:

Mr. C. H. Cochran, Kansas State Penitentiary, Lansing, Kansas.

[fol. 13] Dear Sir:

I wish to acknowledge your letter of August 18th, 1937, relative to your conviction and subsequent sentence to the penitentiary.

I regret that this office cannot aid you in the matter of securing your release or in the matter of securing rehearing in your case. Bu statute, it is the duty of the members of this office to oppose any attempt, by any prisoner in the state penitentiary to secure his release by legal proceedings. Regretting that I cannot aid you personally I am,

Very truly yours, Clarence V. Beck, Attorney General. WES:AN.

Thru the action of the Attorney General of the state of Kansas and other Authorized Officials, blockade to legal procedure had been set up.

On the 17th day of June 1936, a petition was filed in the United States District Court, after same had been filed

in the State Supreme Court and denied without so much as a hearing. A blockade was the- set up to stop the filing of the petition. After the authorities of the States and authorized agents confiscated the petitioners Papers, your petitioner Moced the Court to "Enjoin" the warden and other officials of the State from further interference; this was filed on the 22nd of July 1936.

Time after time your petitioner ask- the judges of the Supreme Court of Kansas for advice as to how your petition could file orderly and proper processes into the court. Time after time the court refer-ed your petitioner to the parties that set up the "Perpetual" blockade that prevented your petitioner's timely appeal and filing proper procedures.

Your petitioner is now being held to involuntary servitude in the Kansas State Penitentiary by force and denials of his timely appeal as provided by law to every American Citizen.

Your petitioner will show by the record, that the officers and agents for the State of Kansas, have since the moment of his arrest, exercised as despotic censorship over ever-document, process or letter made or written by your petitioner to the end that he has been denied of his good and meritous answer to the charge against him and permitted to show only as much of any defense or process as suited the officer and agents of the State of Kansas.

Your petitioner respectfully asserts to the court that he has never read or been able to prevail upon the State or the State's officers to furnish any part of the record to him. [fols. 14-16] Therefore, your petitioner respectfully contends that all records be brought before the court for judicial examination.

Respectfully submitted, C. H. Cochran, Petitioner.

STATE OF KANSAS,
County of Leavenworth, ss:

I, Charles Cochran, of lawful age, first being duly sworn, do upon solemn oath, aver that the foregoing "statement of facts is true in every detail.

C. H. Cochran.

[fol. 17] AFFIDAVIT OF C. H. COCHRAN

STATE OF KANSAS,
County of Leavenworth, ss:

Comes now C. H. Cochran being of lawful age, after being duly sworn disposes and says, that in June 1936 he did file a petition for the Writ of Habeas Corpus. This petition No. 32,802 Cochran vs. Simpson, was wrote and sent to his sister, Mrs. L. B. Godfrey by underground method of which was filed, a decision rendered and Syllabus wrote by the Supreme Court, denying the petitioner his lawful right to enter his defense. The petitioner then moved too have a certified copy of petition, all of which was denied.

This petition was never mailed through the prison Authorities and regular mail channels and being a layman the petitioner never realized that the officials had no Authority to deny a lawful appeal. If the petition #32,802 made the act of Mr. Simpson and the State of Kansas a part of the petition then the State Supreme Court failed to conclude it as part of opinion and thereby, if such had been a part of the petition then the State Supreme Court held it lawful for but in the petition he set out the full reasons why he had been denied the fight to redress in the Court. He further states that he was denied the right to have same petition certified by the prison notary public. The opinion of the Supreme Court was arbitrary and prejudicial by denying petition- his defense before rendering said opinion.

In the second petition attacked the Constitutionality of the Habitual Criminal law, charging the Law to be a "Ligislatis Bill of Attainde". The court refused to consider the petition and it was filed in the Federal District Court, Case No. H. C. 421. This case was denied against the petitioner, but Judge Hock did rule that the excessive sentence was Null and Void. Then based his opinion upon the Subject matter of petition.

The petition of C. H. Cochran never at any time brought forth the act of the Lacy M. Simpson, Warden, E. M. Stublefield, Deputy Warden, Nor the acts of the court of Sumner County as an issue to be decided. But the petitioner can show by record that petitioner had to ask the Federal Court to Enjoin Lacy Simpson Warden, et al. from the unlawful restraint of petitioner Contacting the United

States District Court on file. Case No. #421. H. C. Cochran vs. Simpson. And that the action of the State of Kansas and the Warden of the State officials and duly authorized agent has never been ruled upon by any court.

And that C. H. Cochran was unlawfully denied his timely appeal for over 4 years. Affiant saith no further.

C. H. Cochran, Affiant.

[fol. 18] In the Leavenworth County District Court
First District of Kansas

In the Matter of Application of C. H. Cochran for the Writ of Habeas Corpus

Affidavit of Citizenship and Paupers Oath

I, Charles H. Cochran, being of lawful age, do, upon my oath most solemnly swear that I was born of American parents at Verona, Missouri, on the 12th day of December 1901, and that I have since the date of my birth, resided in the boundaries of the United States continue-ly, and that I am now and always have been, a Citizen of the United States and for the past six years a citizen of the State of Kansas.

I, the said C. H. Cochran, do solemnly aver that I own no property or personal or real whatever, and that I do not possess any funds or other resources with which to pay any attorney fees, filing fees, court costs, printing costs or any other obligations ordinarily incurred by those who must resort to legal process in persuit of justice.

Therefore, I respectfully contend that I am of that class of person by the common law, the statute laws of the state of Kansas and of the United States, defined as a pauper,

Wherefore I respectfully pray for the leave of the Court to prosecute an application for the Writ of Habeas Corpus.

Respectfully submitted, C. H. Cochran.

[fol. 19] Affidavit of C. H. Cochran

I, C. H. Cochran, being of lawful age, after being duly sworn make the following Statement and solemnly swear to be true.

On or about the 8th day of June, 1935, The Board of Administration of the Kansas State Penitentiary posted an order that no petition- shall be filed in the Court unless it was approved by them, or to some effect.

C. H. Cochran, Affiant.

[fol. 20] In Supreme Court of Kansas at Topeka, Kansas

In the Matter of Application of C. H. Cochran for the Writ of Habeas Corpus

Motion for Order Directing District Court of Sumner County to Certify Record etc.

Comes now Charles H. Cochran, your petitioner in the above entitled action and respectfully moves and prays the court to summon into court for judicial notice and examination all records, documents, transcripts and entries now on file in your petitioners cause in the office of the Clerk of the Sumner County District Court at Wellingto, Kansas in the office of the Clerk of The Supreme Court, at Topeka, Kansas for reasons that the State, through its duly Authorized Officers and representatibes has consistanyly refused to prove your petitioner with any fascimile of such records, documents transcripts and and entries and have repeatedly been permitted to proceed against your petitioner by allegation and contentions drawn from their own behalf, ingenuity and personal prejudice and not from the record, to the end that there are now on file in the record statements and assertions against your petitioner which are exactly counter to the record and are such as to inflict great and unlawful injury upon your petitioner.

Your petitioner further moves that the lieu of any counsel in his behalf who is informed in the premis, all filed be subject to the approval of your petitioner as to the correctioness of words, figures etc.

Appearing on the face thereof, and that all records and files not so approved be subject to proof of its correctness by trial.

Respectfully Submitted, Charles H. Cochran, Petitioner.

[fol. 21] AFFIDAVIT OF EMMA L. HINTON

I, Emma L. Hinton being of lawful age and duly sworn disposes and states that on or about June 1st, 1934 C. H. Cochran an inmate of the Kansas State Prison by written Consent gave me power of attorney to act in his behalf in the Supreme Court of Kansas to file and execute all transaction in that court. On June 15th 1934, Mr. E. M. Stubbliefield, deputy warden called me into his office and forbade me to take out any more papers belonging to C. H. Cochran. I therefore could do nothing further, After Mr. Kirk Prather came in as Warden I was allowed to take the papers for Keeping and they still remain in my hands.

"Mother" Emma L. Hinton, Affiant.

Subscribed and sworn to before me this 28th day of August, A. D. 1940. El Freda McCullough, Notary public. My commission expires September 4, 1940.

I, C. H. Cochran after being duly sworn sweras that the foregoing statement is a true copy of the original statement.

C. H. Cochran, Affiant.

[fol. 22] AFFIDAVIT OF FRANK BOAZ

I, Frank Boaz, being of lawful age, after being duly sworn disposes and avers, that on or about the 14th day of June, 1933, C. Ch. Cochran aske me to offer correction to errors, if any in his appeal documents. After he had finished readint the papers he stated that he was going to file them and went to the deputy wardens offs, upon his return he informed me that his papers had been confiscated by the deputy warden. About a year latter C. H. Cochran Complained again that he had been restrained from filing he appeal papers.

The affiant swears no further.

Frank Boaz, Affiant.

Subscribed and sworn to before me this 9th day of Sept. A. D. 1940. R. D. Payne, Notary public. My commission expires April 18th, 1941.

I, C. H. Cochran after being duly sworn swears that the foregoing statement is a true copy of the original statement.

C. H. Cochran, Affiant.

[fol. 23] AFFIDAVIT OF C. C. CREBS

I, C. C. Crebs, being of lawful age do upon oath after being sworn disposes and say on or about the 15th day of May, 1933, C. H. Cochran asked me to offer correction to errors, if any, in his appeal documents.

After he had finished reading the papers he state that he was going to file them and went to the Deputy wardens office. Upon his return he informed me that his papers had been confiscated by the deputy warden.

About a year later C. H. Cochran complained again that he had been restrained from filing his appeal.

C. C. Crebs, Affiant.

Witness my hand and seal this 9th day of September, A. D. 1940. R. D. Payne, Notary public. My commission expires as notary public on the 18th day of April, 1941.

I, C. H. Cochran after being duly sworn swears that the foregoing statement is a true copy of the original statement.

C. H. Cochran, Affiant.

[fol. 24] AFFIDAVIT OF C. H. COCHRAN

I, C. H. Cochran, being of laaful aged and after being duly sworn disposes and states that on June the 3rd, 1933, I posted through the regular mail two copies of notice of appeal.

The Court never acknowledged receipt of same and I sent 2 more on the 10th day of June 1933, these copies were confiscated and destroyed by the Deputy Warden A. J. Graham.

Then I sought to mail my appeal papers to the Supreme Court all of which were taken away from me and destroyed and I was from time to time denied the right to file lawfully and timely any action to a lawful hearing.

C. H. Cochran, Affiant.

Subscribed and sworn to before me this 9 day of Sept., A. D. 1940. R. D. Payne, Notary Public. My commission expires 18th April, A. D. 1941.

[fol. 25] AFFIDAVIT OF C. H. COCHRAN

I, C. H. Cochran, being of lawful age, after being duly sworn avers, that he has served notice of his appeal from the order of dismissal of his Writ of Habeas Corpus, Which was denied and dismissed without a hearing by the District Court of Leavenworth County Kansas on the 11th day of December 1940. By mailing to the Respondent, M. F. Amrine, Warden of the Kansas State Penitentiary and 2 Copies to the Clerk of Court, Leavenworth Kansas Complying with sec 60-3306. and thereby

Affiant saith not further.

C. H. Cochran, Affiant.

[fol. 26] J. H. Wendorff, Judge, First Judicial District, Leavenworth, Kansas

Dec. 11, 1940.

Mr. C. H. Cocharan, Box 2, Lansing, Kansas.

DEAR MR. COCHRAN:

I have examined your petition for writ of habeas corpus containing a Journal Entry of the moroceedings in the District Court of Sumner county, in which you were convicted, and find nothing irregular in proceedings, which would authorize the issuing a writ of habeas corpus. The matters you complain of should have been corrected by an appeal to the Supreme Court. I cannot re-try the case, and correct the errors you complain about.

For that reason I am denying the petition.

Very truly yours, J. H. Wendorff.

JHW:CT.

Copy

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

No. —

In Re C. H. COCHRAN

APPLICATION FOR WRIT OF HABEAS CORPUS

After examination of the peition in the above entitled action. I find that the petition does not state facts suf-

ficient to warrant the issuing of a writ of habeas corpus, and the request for such a writ is therefore denied.

J. H. Wendorff, Judge.

I, C. H. Cochran after being duly sworn disposes and says that the above is a true copy of the original.

C. H. Cochran, Affiant.

Subscribed and sworn to before me this 9 day of Sept., A. D. 1940. —— ——, Notary Public. My commission expires 18th April A. D. 1941.

[File endorsement omitted.]

[fol. 27] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 28] In Supreme Court of Kansas

Re: 35156

In the Matter of C. H. Cochran, for the Writ of Habeas Corpus, Petitioner,

vs.

Milton F. Amrine, Warden, Kansas State Penitentiary, Respondent

Motion for Leave to Appear Before Court—Filed March 11, 1941.

Comes now; your petitioner of the above entitled cause and moves the court for the petitioners appearance for reason, to put in his lawful defense and introduce pertinant evidence material in his Cause to the above entitled action, in that he was and has been denied the right by the Leavenworth County District Court, which Considered, Denied and dismissed without a lawful hearing, within the meaning the Constitutional Guaranties or any hearing at all. Therefore; your petitioner cannot consider any action or hearing, where his defense is not entered or his evidence properly Considered by the court as a valid hearing and your petitioner moves and prays the Court to order the petitioner of the above entitled cause brought before the court for the above reason mentioned.

C. H. Cochran, Petitioner.

[File endorsement omitted.]

[fol. 29] IN SUPREME COURT OF KANSAS

35156

In the Matter of C. H. COCHRAN for a Writ of Habeas Corpus, Petitioner,

MILT F. AMRINE, Warden of the Kansas State Penitentiary, Respondent

ORDER DOCKETING APPLICATION ETC.—March 15, 1941

This court having under consideration a verified application for a Writ of Habeas Corpus herein, it is ordered that said application be docketed and consolidated with the case of In the Matter of C. H. Cochran for a Writ of Habeas Corpus, Appellant v. Milt F. Amrine, Warden of the Kansas State Penitentiary, Appellee, No. 35156.

It is further ordered that the provisions of Rule No. 2 be waived.

It is further ordered that the petitioner and appellant serve and file his abstract and brief, giving the appellee sufficient time to serve and file his abstract and brief on or before the 10th day of April, 1941, the day on which these cases are assigned for hearing in this court.

It is further ordered that the motion of the petitioner and appellant to appear before the court on the day these cases are heard will be dealt with when the cases are ready for hearing.

By the Court. (Seal.)

[fol. 30] IN SUPREME COURT OF KANSAS

In Re: No. 35156

In the Matter of Application of C. H. COCHRAN for the Writ of Habeas Corpus, Petitioner,

vs.

THE HONORABLE JOHN DAWSON, Chief Justice of the Supreme Court of Kansas, State of Kansas, et al., Respondent

MOTION FOR LEAVE TO APPEAR BEFORE COURT—Filed March 18, 1941

Comes now C. H. Cochran your petitioner and alleges that the court has been duly moved by "Motion for appear-

ance" that all evidence may be presented before the court and to act as counsel in his own defense, in that the court to date has denied the petitioner proper defense in his petition No. 35156 now on file in that court, by non-appointment of competent counsel. The petitioner must act in own defense and is therefore a direct denial of constitutional requirements as follows:

I

That Constitution of the United States Guarantees Competent Defense for an unlawful imprisonment of Citizen of the United States.

II

The Denial of defense to Habeas Corpus proceedings, is a direct violation of the Constitution of the United States by lack appointment of Counsel or defense by the petitioner in own behalf wherein the petitioner is in poverty circumstances.

III

To deny the pauper the right of defense is a direct Violation of equal protection and accessibility to the court and denies the petitioner the right to a lawful hearing of the cause at bar, permitting a biased and oneside decision by the court.

Therefore your petitioner prays that the court will let issue a Writ of Habeas Corpus and produce your petitioner in the Supreme Court that he may defend his cause before the court in petition No. 35156, now on file in that court in Re: C. H. Cochran v. Milton F. Amrine, Warden of the Kansas State penitentiary, all of which defense is within the provision of the United States Constitution for a lawful hearing on subject matter contained in said petition filed therein, and petitioner contends that it is his right {fols. 31-32} to enter his evidence and defense, So that an impartial hearing may be had and defend his liberty against any and all acts of the court and state and your petitioner Prays that said Writ be issued that petitioner may be brought into Court.

C. H. Cochran, Petitioner Pro Se:

Subscribed and sworn to before me this 14 day of Mch. A. D. 1941. R. D. Payne, Notary Public. My commission expires Apr. 18, A. D. 1941. (Seal.)

[File endorsement omitted.]

[fol. 33] IN SUPREME COURT OF KANSAS

No. 35156

C. H. COCHRAN, Appellant,

vs.

MILTON F. AMRINE, Warden Kansas State Penitentiary, Appellee

ABSTRACT OF APPELLANT—Filed March 20, 1941

C. H. Cochran, Appellant, Pro Se:

Appeals from the District Court of Leavenworth County, Kansas, Honorable J. H. Wendorff, Judge

[fol. 34] On April 13th, 1933, the person of your petitioner, C. H. Cochran was taken by force and transported against his will and without his consent or any lawful warrant authorizing his arrest or restraint from Harper County to Sumner County, Kansas by the State Officials and that after the petitioner was lodged in the Sumner County Jail, a warrant charging the petitioner with the crimes (1) Uttering and (2) passing a worthless check.

The record shows that on the 27th day of April, 1933, the petitioner was given a preliminary hearing and bound over for trial in the Sumner County District Court.

The record further shows that on the 27th day of April, 1933, the petitioner ask to have the following witnesses subpeonaed for a jury trial; Earl People, Truck driver for the petitioner who was, at the time of his arrest the owner and operator of the Cleaning (dry) Establishment at Harper, Kansas.

Violet J. Cochran, who was chashier of the firm and in such capacity, received from the driver peoples as a part of his daily receipts, the check which your petitioner was charged with writing and passing.

Buck Heron, who personally knew the person who uttered the check involved.

Gladys Silvers, a friend of the party known as A. J. Messenger, the person who uttered the spurious check.

Elmer Madsen, a garage owner at Anthony, Kansas who had heard the said A. J. Messenger admit that he uttered the spurious check with the intent to defraud and express the opinion that the petitioner could not be sent to the penitentiary for a check that was for less than $20.00 dollars.

Mrs. Ada Peoples, who questioned the value of the check when her Husband (Earl Peoples) turned it in with his daily receipts.

All ot these material witnesses were excluded from the list to be subpeonaed for the trial and were not present.

The trial of your petitioner was post-poned fron the 8th day of May until the 15th day of May, without notice to your petitioner.

On the morning of May the 15th, 1933, about 9:30 A. M. and seated at the counsel table with his counsel Mr. Harry B. Davis of Anthony, Kansas. When the County Attorney called the petitioner's case he stepped to the group of men seated in the chairs for the proposed jurors and the men all seated themselves in the jury-box all except one, he retired from the courtroom. The County Attorney then addressed them as jurors. Your petitioner ask then to his lawful examination of the jurors, this was denied. The County Attorney passed these remarks to the jury: Gentleman of the Jury, this man is an ex-convict and has been convicted several times before for forgery; (Your petitioner has never been convicted for forgery in any other state of the United States or at any other time for the crime of forgery) and that the prisoner has been convicted from this County before. At this point your petitioner ask again that he be permitted to examine the jury, this was denied. He ask if his witnesses had been subpeonaed. His attorney said that they had and that they were somewhere in the courthouse, or that they would be there.

The County Attorney abused the prisoner with verbal statements to the jury sneered and said to the jury that this man is guilty and is trying to put the state to the expense of a trial.

[fol. 35] Again the petitioner ask to examine the jury, the judge told your petitioner to set down that it was not necessary to examine the jury, and your petitioner ask his

attorney to stop the trial, to this he replied, that there was nothing that he could do *as the court was determined to convict* you and would not listen to him.

While the defense counsel was not an able counsel, *he permitted the "railroading"* of your petitioner by not offering objections to the procedure of and the conduct of the court.

At this point of the opening statement, the County Attorney again sneered at the petitioner and walked to the table and took from his "Brief-case" a sheave of papers and holding them up to the jury and again told the jury that the petitioner had been by this evidence (Holding up papers to the jury) convicted many times for the crime of forgery and he as the county attorney wanted the prisoner found guilty and put where he belonged. To this the court could not show any record of any previous convictions for the crime of forgery or any other lawful convictions in a penitentiary other than the one of 1928 from the county of Sumner County, Kansas.

The State called its first witness, W. E. Evans, the plaintiff. He told the court that he never at any time notified the petitioner that the said check had been "Protested." The next witness was the brother-in-law of the plaintiff, his testimony said that he never tried to notify the petitioner of the valueless check and in no place in the testimony of these two did it co-incide with each other. Then followed several banker- that tried to identify the handwriting on the check, failed. Never at any time did the state show that the check was written by the petitioner. At no time did the State introduce a qualified hand-writing expert to show any simularity or evidence that the petitioner wrote the check. The plaintiff's testimony failed to prove that the petitioner wrote the check. The plaintiff's testimony failed to prove that the petitioner wrote the check or had any criminal knowledge or intent what-soever in the matter. The state rested its case and recessed.

Mr. J. Rodgerson, a witness for the defense was called to the stand to refute the testimony of the said Elmer Holt, a witness for the state that introduced suborn testimony (deliberate) at the pleasure of the state, then who later mixed with the jury while at recess.

Mr. Davis, the Counsel for the defense then took the stand did testify with deliberate knowledge it was false and *and* incriminating to your petitioner.

Your petitioner ask to take the stand in his own behalf, this was met with rigid opposition and denied. The petitioner was severely reprimanded when he ask for his rights, a disturbance issued, the court told your petitioner to set down, the defense rested its case.

The state opened its closing argument with a compromise and abuse to your petitioner with statements that were false and misleading, that the petitioner had been convicted previously for the crime of forgery (this the state did not show and could not show to the jury) never at any time did the County Attorney show the jury any evidence or to the court that the petitioner had knowledge criminal or otherwise the check was worthless, after about 15 minutes of this abuse the state closed it's argument.

A verdict of guilty was returned on the second count (passing of check) of which not one iota of evidence was introduced to show or sustain such a verdict. Your petitioner ask the defense counsel to give notice of appeal. Motion argued, if argued at all, in the absence of your petitioner. (Later another notice was sent to the trial court of which no receipt was received.)

[fol. 36] Your petitioner then set out to secure evidence to prove his innocence, to which he secured an affidavit and confession from the man that wrote the check with the intent to defraud the firm of $12.60.

The petitioner then wrote and moved the trial court to reopen the case of state of Kansas v. C. H. Cochran on the discovery of new evidence to which the court never acknowledged the receipt of the motion. Copies of the original affidavit was confiscated. The state set about to block and foecibly restrain your petitioner from filing his appeal. Your petitioner ask that he be permitted to secure his transcript, this was denied by the State authorized officials and agents and by the prison rules. The time of your petitioner's appeal limit had expired and under similar restraint your petitioner was denied the right to file a petition for a Writ of Habeas Corpus. Eventually the petition was filed in an unusual way, this petition was #32802, setting up several questions of the trial of your petitioner. This petition was *denied by the Supreme Court without so much as any kind of a hearing, and was arbitrarily denied*, and a decision was written without any lawful defense in the said case. Later a statement of facts was sent to the Supreme Court of Kansas, to this their

reply was it was a serious charge to make such a statement. Petitioner moved the Supreme Court to rehear the petition and this was denied. The Supreme Court ask- the Attorney General to investigate the statement of facts to which your petitioner made a rigid objection. All of the action and motions were struck down without so much as a hearing. The petitioner ask- the Supreme Court to certify the petitioner's petition, this was denied. A notice of appeal was tendered to the Supreme Court Clerk, this too was struck down. The Officers and agents of the State of Kansas set up another blockade and confiscated the papers and documents of your petitioner.

Your petitioner has evidence that the Warden, Lacy M. Simpson, E. M. Stubblefield — Deputy Warden, A. J. Graham, Assistant Deputy Warden, A. S. Foulks, Pardon Attorney, Board of Administration and other authorized Officers and agents of the State of Kansas assisted in the blockade for redress.

Two Prison Welfare workers who sought to help the petitioner was cautioned not to carry out papers for the petitioner of file any in the courts.

The following letters are from the Supreme Court of Kansas, The Attorney General's Office and the Board of Administration:

5-15-35.

C. H. COCHRAN:

The letter you wrote to the U. S. Dept. of Justice K. C. has become misplaced. If you will re-write it we will see about mailing it.

Lacey M. Simpson, Warden.

The above letter refer-ed to was wrote to the United States Department of Justice for aid in the restraint against your petitioner.

Letters addressed to Attornies was destroyed and sent back to the writer and your petitioner.

Letters addressed to the petitioner's mother for aid was destroyed and never mailed. Some were returned and petitioners were taken out.

C. H. COCHRAN. #3608:

You will have to change this letter if you want it mailed. Under the minutes of the Administration all matters pre-

taining to Habeas Corpus must be refer-ed to the Board, that was what was done with you- motions.

Lacey M. Simpson, Warden.

The letters refer-ed to above were written to the Clerk of the United States District Court.

[fol. 37] The following letter is from Chief Justice, R. A. Burch of the Supreme Court of the State of Kansas:

I have your letter of June 1; asking that I take some action with the reference to the conduct of Mr. Lacey Simpson, Warden of the State Penitentiary, and the Hon. A. S. Foulk, Pardon Attorney, relating to enforcement of an order of the United States District Court of the Judge thereof.

I have no authority and the Supreme Court of the State of Kansas has no Authority to enforce the orders of a Federal Court.

Also, I have no authority and the Supreme Court has no general authority to regulate management of the affairs of the State Penitentiary.

Yours very truly, R. A. Burch, Chief Justice Supreme Court of Kansas, Topeka, Kansas.

The petitioner wrote the Attorney General's office several times and ask that he assist your petitioner to secure his rights in the courts and stop the interference of the Prison authorities. On September 2, 1937 a response from the Attorney General's office reads as follows:

Mr. C. H. Cochran, Kansas State Penitentiary, Lansing, Kansas.

Dear Sir:

I wish to acknowledge your letter of August 18th, 1937, relative to your conviction and subsequent sen-ce to the penitentiary.

I regret that this office cannot aid you in the matter of securing your release, or in the matter of securing rehearing in your case. By Statute, it is the duty of the members of this office to oppose any attempt, by any prisoner in the state penitentiary, to secure his release therefrom by legal proceedings. Regretting that I cannot aid you personally, I am

Very truly yours, Clarence V. Beck, Attorney General. WES:an.

Thru the actions of the Attorney General of the State of Kansas and other Authorized officials, blockaded to legal procedure had been set up.

On the 17th day of June 1938, a petition was filed in the United States District Court after same had been filed in the State Supreme Court and denied without so much as a hearing. A blockade was the set up to stop the filing of the petition. After the Authorities of the State and authorized agents confiscated the petitioners Papers, your petitioner Moved the Court to "Enjoin" the warden and other Officials of the State from further interference; this was filed on the 22nd of July 1936.

Time after time your petitioner ask the Judges of the Supreme Court of Kansas for advise as to how your petitioner could file orderly and properly processes into the court. Time after time the court refer-ed your petitioner to the parties that set up the "Perpetual" blockade that prevented your petitioner's timely appeal and filing proper procedures.

[fol. 38] Your petitioner is now being held to involuntary servitude in the Kansas State penitentiary by force and denials of his timely appeal as provided by law to every American Citizen.

Your petitioner will show by the record, that the officers and agents for the state of Kansas, have since the moment of his arrest, exercised a despotic censorship over every document, process of letter made or written by your petitioner, to the end that he has been denied of his good and meritorious answer to the charge against him and permitted to show only as much of any defense or process as suited the officers and agents of the State of Kansas.

Your appellant has reasons and right to his appeal by error of the court and by choice.

The foregoing is a true and correct abstract of the above case.

C. H. Cochran, Appellant Pro Se:

[fol. 39] ABSTRACT IN PROCEDURE OF APPEAL FROM THE LEAVENWORTH COUNTY KANSAS DISTRICT COURT

The Appellant filed his petition of Habeas corpus in the District Court of Leavenworth County on the 14th day of November, 1940 and the court considered and denied the

petition on the 11th day of December 1940. Thereupon: the petitioner and appellant duly gave notice of his intent to appeal to the Supreme court of Kansas and complied with Sec. 3306, R. S. of Kansas, by showing by affidavit, therefor perfecting said appeal.

The reaosn of this appeal was that the District court of Leavenworth County, was for failure to give a legal and lawful hearing of said petition and that said denial was against your appellant and that said decision did not concur with rulings of the United States Supreme Courts on subject matter, all of which is a right of the appellant to secure redress for wrongs and injuries inflicted by the state of Kansas and officers and agents thereof.

The appellan- not being learned in court procedure, may have been very informal in his petition and pleadings, but the entire petition, brief and statement of facts (Abstract) are correct in every detail.

In the petitioners and appellants efforts to make orderly pleadings and filing into the Supreme Court of Kansas from district of Leavenworth County, confiscation and impounding of such papers commenced again by the respondent, Milton F. Amrine warden of the Kansas State Penitentiary and LeRoy Bradfield, pardon and parole attorney, all of which has been repeatedly complained of without material results Until the 16th day of March, 1941. Papers that were addressed to the Clerk of Supreme Court of Kansas, has been held and impounded in the office of LeRoy Bradfield, pardon attorney since the 9th day of February, 1941. Petition, Brief Abstract and pleadings has been filed in forma pauperis.

The appeal #35156 is now pending in the Supreme Court of Kansas set for hearing on the 10th day of April 1941.

This is a true and correct Abstract of the appeal of the appellant.

C. H. Cochran, Appellant, Pro Se:

[fol. 40] BRIEF

In Procedure on Appeal from the District Court of Leavenworth County Kansas

The appellant and petitioner has by constitutional law the right to process in Habeas Corpus however informal it may be, and that he is entitled to a lawful hearing thereon.

A right of defense against such injuries inflicted and redress for such wrongs.

12 R. C. L. 1180, 1236, The Writ of Habeas corpus is a Writ of right, and is sometimes issued upon very informal application, motion to quash the writ does not lie because of mere formal defect in the petition upon which it was issued; the inquiry in such cases bring to the technical formality of the showing made to the court for the issuance of the writ, but as to the legality of the detention of the prisoner.

The illegal impounding of legal documents by the state of Kansas, officers, and agents or the respondent to said petition, Violates the right of constitutional guaranties by denying equal protection of the law.

See Exparte Virginia 100 U. S. 346.

The appellant says that the acts of the respondent et al. is the act of the State, by denying orderly process and impounding appellants papers and documents appertaining to his action in Habeas Corpus being mailed to the Court for filing.

Respectfully Submitted, C. H. Cochran, Appellant, Pro Se:

[fol. 41] IN SUPREME COURT OF KANSAS.

No. 35156

C. H. COCHRAN, Appellant,

vs.

MILTON F. AMRINE, Warden Kansas State Penitentiary, Appellee

BRIEF OF APPELLANT

C. H. Cochran, Pro Se:

Appeal from the District Court of Leavenworth County, Kansas

Honorable J. H. Wendorff, Judge.

[fol. 42] Citations Refered

Carter v. Texas, 177 U. S. 442, 447, 44 L. Ed. 839, 841, 20 S. Ct. 687.

Rogers v. Alabama, 192, U. S. 226, 231, L. Ed. 417, 419 S. Ct. 857.

Chicago, B and Q. R. R. v. Chicago, 166 U. S. 226, 233, 41, L. Ed. 979, 983, 17 S. Ct. 581.
Herbert v. Louisiana, 272 U. S. 312, 316, 317, 71. L. Ed. 270, 273, 47 S. Ct. 103, 48. A. L. R. 1102.
18th Artical Kansas Bill of Rights.
Franks v. Mangum, 237 U. S. 309, 335, 59 L. Ed. 969, 983, 35 S. Ct. 582.
More v. Dempsey 26, U. S. 86. 90, 91, 67, L. Ed. 543, 545, 546, 43, S. Ct. 265.
Roller v. Holly 176 U. S. 398, 20 S. Ct. 414.
Standard Oil Co. v. Missouri, 224 U. S. 281.
Scott v. McNeal, 154 U. S. 34.
Robb v. Connolly, 111 U. S. 624, 637, 28 L. E. 542, 546, 4 S. Ct. 544.

[fol. 43] [Title omitted]

NATURE OF CASE

The Appellant, C. H. Cochran, was tried in the District Court of Sumner County, Kansas on information, charged with (2) Counts of forgery, (1) Making and (2) uttering, * * *

In abstracting this case the appellant has attempted to set up part of the facts and circumstances surrounding the case up to present time.

The appellant was denied a fair and lawful trial before a prejudice jury, in that the opening statement of county attorney was prejudical and placed defendant in jeopardy (2) the right to examine jury was denied, (3) the Introduction of suborn testimony by the State (4) The witnesses of the State mixing and talking with jurors during recess, (5) That the defense witnesses had never been subpoenaed.

The appellant gave a timely notice of appeal to the District court of Sumner county which was handed to the Deputy warden to mail on the 8th day of June 1933.

[fol. 44] The appeal was written and presented for mailing on or about July 15, 1933, (Addressed to the Supreme Court) to the then Deputy Warden A. J. Graham. The Brief and abstract was never mailed, but returned to your

appellant, Stating that prison rules did not permit the filing of the appeal.

Your appellan tried again to mail the abstract and brief to the Court on or about May 15th, 1934, Mr. E. M. Stubblefield confiscated appeal documents and your appellant was reprimanded for his efforts and told to stop. Since June 1933, up until the time when the limit of timely appeal had exhausted, your appellant was forcibly restrained from his orderly appeal by the officers and agents of the State of Kansas and the Kansas State Penitentiary.

The appellan shows by record that the District Court of Leavenworth County refused to hear the petition of Habeas corpus now on file in that court, 35156 and allow the appellan witnesses to sustain the fact of such action of the officer and agents of Kansas.

The appellan has been denied without a hearing, all of his lawful, Orderly remedies prescribed by the Statutes of Kansas for redress of the injuries which has been inflicted upon him by the unlawful usage by the power of State.

[fol. 45] Your petitioner comes with his cause, to the Supreme Court of Kansas only after he had been denied without hearing, all of the lawful, orderly remedies prescribed by the statutes of Kansas for redress of the injuries which have been inflicted upon him by the unlawful usage by the power of state, the deprivation of his constitutional rights and the denial of a trial or hearing within the purview of the fundamental conceptions of justice. Your petitioner respectfully contends that the officers and the agents of the state of Kansas willfully deprived him of his constitutional right to conpulsory process for witnesses for his trial.

Your petitioner respectfully contends that the United States Supreme Court in Carter v. Texas, 177 U. S. 442, 447 44 L. Ed. 839, 841, 20 S. Ct. 687, Rogers v. Alabama, 192, U. S. 226, 231, L. Ed. 417, 419, 24 S. Ct. 857, and B. and Q. R. R. Co. v. Chicago 166 U. S. 226, 233, 41 L. Ed. 979, 983, 17 S. Ct. 581, deals specifically with such conduct on the part of the state officers as constituting state action within the purview of the 14th Amendment and in consistent with requirements of "Due process of Law" to the same effect, please See: Herbert v. Louisiana 272 U. S. 312, 316, 317, 71 L. Ed. 270, 273, 47 S. Ct. 103, 48 A. L. R. 1102.

Your petitioner respectfully contends that it was error for the court to over-rule his motion for a new trial in the

absence of your petitioner and to his knowledge without the presence of a court reporter, without hearing all of the movants evidence thereon or any record of such evidence as the movant had to offer in support of his recorded contention that the charge against him was derived from evidence as the movant had to offer in support of his recorded contention that the charge against him was derived from evidence from the officers themselves which acts by law are defined as "Compounding a Felony."

Your petitioner respectfully contends that it was in violation of the moral code of universal justice for the state throught its court, to proceed further against your petitioner until a full hearing on his motion was had and recorded.

Your petitioner respectfully contends that he was entitled to his appeal and that the acts of the states Officers and representatives in supressing and impounding your petitioners appeal documents, in order to deprive him of his timely appeal, constitutes a direct, recorded denial of the constitutional requirements of "Due process of Law." and a violation of your petitioners Constitutional rights to redress of his injuries by "Due process of Law, 18th article of the Kansas Bill of rights * * * Frank v. Mangum 237 U. S. 309, 335, 59 L. Ed. 969, 983, 35 S. Ct. 582; More v. Dempsey 216 U. S. 86, 90, 91, 67, L. Ed. 543, 545, 546, 43 S. Ct. 265. Your petitioner contends that after he had struggled for over 2 years to get his motion out of the trial court and up to the Supreme Court of Kansas the limit had expired for his appeal and that your petitioner brought up the violation of "Due process of Law," before the court in form of the Writ of Habeas Corpus which was denied without a hearing.

Your petitioner respectfully contends that the state deprived him of "Due process of Law," by not waiting and postponing trial to subpeona his witnesses which wholly deprived your petitioner of his opportunity to be assured a fair trial which met the requirements of "Due process of Law" Please See: Roller v. Holly 176 U. S. 398, 20 S. Ct. 414; Standard Oil Co. v. Missouri 224, U. S. 281; Scott v. McNeal, 154, U. S. 34 and Robb v. Connelly 111 U. S. 624, 637, 28. L. Ed. 542, 546, 4 S. Ct. 544.

[fol. 46] Your petitioner respectfully contends that the State of Kansas, by and through its duly authorized officers, agents and representatives is illegally holding your peti-

tioner to involuntary servitude and depriving him of his liberty upon pretense that your petitioner was duly convicted by a fair and impartial trial, of the commission of a crime whereas the record plainly shows that his conviction was contrived through the pretense of a trial which in truth was but used as a means of depriving your petitioner of his liberty through a deliberate deception of the court and jury by the presentation of false, unfounded, prejudicial inciting allegations of circumstancial evidence against your petitioner while willfully concealing the true pertinant evidence in the premises and unlawfully supressing the testimony of the material witness to the crime charge which shows the innocence of your petitioner.

Very respectfully submitted, C. H. Cochran, Petitioner, Pro Se:

[fol. 47] IN SUPREME COURT OF KANSAS

No. 35156

C. H. COCHRAN, Petitioner,

vs.

MILTON F. AMRINE, Warden Kansas State Penitentiary

MOTION TO SUSTAIN PETITION—Filed April 14, 1941

Comes now your petitioner in the above entitled cause and moves the court to Sustain petition for the Writ of Habeas Corpus, and restore your petitioner to his lawful liberty for the following reasons, viz:

I

The records will show that the petition of the above mentioned cause has and was filed in that court and that the State of Kansas nd the Respondent has had reasonable time to show cause why the petitioner should not be released.

II

The Supreme Courts docket will definitely show that said cause was set for hearing on the 10th day of April, 1941. And that the respondent has not ask or moved for any delay,

nor has the petitioner been informed of any such postponement of the "hearing."

III

The petitioner contends that he should have his liberty, because of default of Respondents appearance to defend the action and that the court has prejudicially denied the petitioner his timely and lawful appearance to defend said action and take judicial recognization and make judicial inquiry into the acts of the Respondent and court.

IV

The petitioner contends that his defense is and has been continuously denied by the court and further contends that the Arbitrary exercise of judicial examination is unconstitutional and such delays are vital to the petitioner and his cause,

[fol. 48] And that the petitioner is intitled to be present at all judicial discussions of the above mentioned cause, all of which has been denied the attorney of the petitioner and that such actions are prejudicial, onesided, injurious and biased.

V

That the issues raised in petition are true and pertinant facts and that the delay would not prove or establish evidence or proof to benefit the Respondent, as the facts abstracted are fully supported by evidence and affidavits and that the Respondent has intentionally, purposely and designedly delayed the hearin that said records will not reveal pertinant facts and that it will prolong the unlawful imprisonment of the petitioner.

Therefore: your petitioner moves and prays the Supreme Court to Sustain the petition and discharge the petitioner from custody of the Respondent, Milton F. Amrine, Warden of the Kansas State Penitentiary and restore your petitioner to his lawful Liberty.

Respectfully Submitted, C. H. Cochran, Movant,
Pro Se:

[File endorsement omitted.]

[fol. 49] IN SUPREME COURT OF KANSAS

No. 35,156

In the Matter of C. H. COCHRAN for a Writ of Habeas Corpus, Petitioner,

v.

MILTON F. AMRINE, Warden of the Kansas State Penitentiary, Respondent

RETURN OF MILTON F. AMRINE, WARDEN OF THE KANSAS STATE PENITENTIARY—Filed April 17, 1941

Comes now Milton F. Amrine, Warden of the Kansas State Penitentiary, the respondent herein, and for his return to the writ of habeas corpus heretofore issued, in obedience to the writ of habeas corpus hereto annexed, the said petitioner, C. H. Cochran, was committed to the respondent's custody, was and is now detained by the respondent under and by virtue of a judgment, sentence and commitment duly entered and issued out of the District Court of Sumner County, Kansas, a true copy of which is attached hereto and made a part hereof; that said process and summons was duly issued and is a part of the final judgment and sentence of said District Court of Sumner County, Kansas, and was duly and lawfully made and issued from and out of said District Court, which then was and still is a court of competent jurisdiction.

M. F. Amrine, Warden of the Kansas State Penitentiary.

Subscribed and sworn to before me, a Notary Public in and for Leavenworth County, Kansas, this 16th day of April, 1941. R. D. Payne, Notary Public. (Seal.) My commission expires 4-18-41.

[fol. 50] [File endorsement omitted.]

[fol. 51] IN SUPREME COURT OF KANSAS

No. 35156

In the Matter of C. H. COCHRANE for a Writ of Habeas Corpus, Petitioner and Appellant,

vs.

MILTON F. AMRINE, Warden of the Kansas State Penitentiary, Respondent and Appellee

ABSTRACT AND BRIEF OF RESPONDENT AND APPELLEE—Filed April 17, 1941

[fol. 52] ABSTRACT

Charles H. Cochran, the Petitioner and appellant herein, was convicted of forgery in the second degree in the District Court of Sumner County, Kansas on May 15, 1933.

Prior to this conviction of a felony, Cochran was taken into custody by the Sheriff of Harper County, Kansas and delivered to the officers of Sumner County, Kansas and there incarcerated in jail, pending his trial in the District Court of Sumner County, Kansas. While confined to the Harper County jail, Cochran attempted to escape therefrom. At his preliminary hearing on the 20th day of April, 1933, in a justice of the peace court, Cochran was represented by an attorney, Mr. Harry B. Davis of Anthony, Kansas, and at the trial in the District Court of Sumner County, Kansas, he was also represented by Mr. Davis.

Evidence was offered at the time of sentence that Cochran had been convicted of a prior felony in the District Court of Sumner County, Kansas, and had served a term in the Kansas State Penitentiary at Lansing and further that said Cochran had committed a felony in the state of Oklahoma and had been sentenced from Tulsa County District Court to a term in the Oklahoma Reformatory at Granite, Oklahoma. This being Cochran's third conviction for a felony, he was sentenced by the court to a term for life in the Kansas State Penitentiary at Lansing as an habitual crimi-
[fol. 53] nal.

Following sentence on May 15, 1933, in the District Court of Sumner County, Kansas Cochran filed a motion in arrest of judgment, which was subsequently denied. At that time he was present and represented by his attorney, Mr. Davis.

Likewise a motion for a new trial was overruled with Cochran's counsel present and representing him.

Attached to and made a part of this abstract are certified copies obtained from C. W. Wilson, Record Clerk of the Kansas State Penitentiary at Lansing, Kansas, of the criminal action, sentence, information, journal entry, copy of a letter from Mr. John A. Potucek, County Attorney of Sumner County, Kansas, addressed to Mr. Kirk Prather, then Warden of the Kansas State Penitentiary, giving a brief history of Cochran's record; also attached hereto and made a part of this abstract is an affidavit of Mr. John A. Potucek, who was County Attorney of Sumner County, Kansas at the time of the trial and conviction of said Cochran, and who at the present time is the incumbent of that office; also attached hereto and made a part of this abstract is a copy of the abstract of the petitioner and appellant's finger-print record on file in the United States Bureau of Investigation.

Applications for writs of habeas corpus have been filed in the United States District Court for the District of Kansas by the petitioner and appellant herein. One was dismissed in June, 1936 and the other in March, 1941.

This Honorable Court considered an application for a writ of habeas corpus filed by this petitioner and appellant in 1936. It is reported in the Kansas Reports, Cochran v. Simpson, 143 Kan. 273.

[fol. 54] CERTIFICATE OF RECORD CLERK

I, C. W. Wilson, Record Clerk of the Kansas State Penitentiary, situated at Lansing, in the above County and State, do hereby certify that I am the Record Clerk of the said Prison; that in my legal custody as such Record Clerk, are the original files of commitments, journal entries and information, which said files and records are required by the laws of said State to be kept by such Record Clerk; that the Criminal Action and Sentence, Information, Journal Entry and County Attorney's statement at time of conviction attached hereto are true copies of the original Criminal Action and Sentence, Information, Journal Entry and County Attorney's statement at time of conviction of C. H. Cochran #1 No. 3608, a convict heretofore committed to

said prison, which said originals are now on file and of record in the said files and records of my office; that I have compared each and all said copies with their respective originals in said files and records of my office, and each thereof contains and is a full, true and correct transcript and copy from its said original and from the whole thereof.

C. W. Wilson, Record Clerk of the Kansas State Penitentiary.

Subscribed and sworn to before me this 25th day of March, A. D., 1941. R. D. Payne, Notary Public. My commission expires 4-18-41. (Seal.)

[fol. 55] COMMITMENT TO PENITENTIARY 489-2

Copy Furnished By Office of Kansas State Penitentiary.

Be it Remembered, That heretofore, to wit, on the 29th day of May, A. D. 1933, and at the May Term of the District Court, proceedings were had, in substance as follows, to wit:

Criminal Action Sentence

No. 2120

THE STATE OF KANSAS, Plaintiff,

vs.

C. H. COCHRAN, Defendant

JUDGMENT AND SENTENCE

Now, Came the said defendant, C. H. Cochran, in his own proper person, in open court, whereupon said defendant was informed by the court that he has been found guilty of forgery in the second degree as charged in the information and being inquired of by the Court if he had any legal cause to show why judgment should not be pronounced against him according to law, and still failing to show such cause, it is therefore sentenced and adjudged by the court that the said defendant, C. H. Cochran, be taken hence to the county jail of Sumner County, by the sheriff of said county; thence to the penitentiary of the State of Kansas, and there be confined at hard labor until discharged there-

from in the manner provided by law; his term of imprisonment, however, not to exceed in any event the period of his life nor to be less than — year —; said periods of time being respectively the maximum and minimum measures of punishment provided by law for offense to the commission of which the defendant has been guilty.

It is further considered and adjudged by the court, that the said defendant pay all costs in and about this suit, in this behalf expended, taxed at $—; and hereof let execution issue.

STATE OF KANSAS,
County of Sumner, ss:

I, Jessie Haverstock, Clerk of the District Court sitting in and for said County and State, do hereby certify that the above and foregoing is a true and correct copy, in substance, of the judgment and sentence in the above-entitled cause as the same now, in substance, appears of record in my office.

Witness my hand and the seal of said court, affixed at my office in the City of Wellington, this 29th day of May, A. D. 1933.

Signed: By Edith Cook, Deputy. Jessie Haverstock, Clerk.

[fol. 56] IN THE DISTRICT COURT IN AND FOR SAID COUNTY

No. 2120

STATE OF KANSAS,
Sumner County, ss:

THE STATE OF KANSAS, Plaintiff,

vs.

C. H. COCHRAN, Defendant

INFORMATION

STATE OF KANSAS,
Sumner County, ss:

I, the undersigned, John A. Potucek, County attorney of said County, in the name, by the authority and within two

years of the filing of the complaint herein, and on behalf of the State of Kansas, come now here, and give the Court to understand and be informed, that on or about the — day of —— A. D., 1932, in said County of Sumner, and State of Kansas, one C. H. Cochran did then and there unlawfully, willfully, and feloniously forge, counterfeit and falsely make, one certain check in words and figures, as follows, to-wit:

The First National Bank, in Harper

Harper, Kansas, 10-16-1932, Pay to the Order of Odorless Dry Cleaners $12.60, Twelve and 60/100 Dollars, Signed: A. J. Messinger.

Endorsed on Back: Odorless Cleaners, By, C. H. C.

Such check to be drawn upon the First National Bank of Harper, Kansas, a bank organized and incorporated under the laws of the United States of America.

Second Count

And for a second further and different count I, the undersigned, John A. Potucek, County Attorney of said County, in the name, by the authority and on behalf of the State of Kansas, come now here, and give the Court to understand and be informed, that on or about the 17th day of November, 1932, and within two years of the filing of the complaint herein, in said County of Sumner, and State of Kansas, one C. H. Cochran did then and there unlawfully, willfully, and feloniously sell and deliver to M. R. Evans, for a Valuable consideration, to-wit: goods, wares and merchandise, and lawful currency and money of the United States of America, of the total value of $12.60, one certain falsely made, forged and counterfeited check, which said check was and is in words and figures as follows, to-wit:

The First National Bank in Harper

Harper, Kansas, 10-16, 1932, Pay to the Order of Odorless Dry Cleaners, $12.60, Twelve and 60/100 Dollars, signed: A. J. Messinger.

Endorsed on Back: Odorless Cleaners, by C. H. C.;

Such check purporting to be drawn upon the First National Bank of Harper, Kansas, a bank incorporated under the laws of the United States of America; the said C. H.

Cochran knowing such check to be falsely made, forged and counterfeited, and delivering the same with the intent to have the same uttered and passed.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Kansas.

Signed: John A. Potucek, County Attorney.

CERTIFICATE OF COPY

STATE OF KANSAS,
Sumner County, ss:

I, Jessie Haverstock, Clerk of the District Court in the Twenty-fifth Judicial District of the State of Kansas, sitting for the County aforesaid, do hereby certify the above and foregoing to be a true, full and complete copy of Informa-
[fol. 57] tion in the within entitled case No. 2120 as the same remains on file in my office.

Witness my hand and the Seal of said Court, affixed at my office in Wellington, this 29th day of May, 1933.

Signed: Jessie Haverstock, Clerk. By Edith Cook, Deputy. (Seal.)

[fol. 58] STATE OF KANSAS,
Sumner County, ss:

I, John A. Potucek, being duly sworn, on oath do say that I am County Attorney of said Sumner County, in the State of Kansas, and that I am informed and verily believe that the allegations set forth in the within information are true. So help me God.

Signed: John A. Potucek.

Subscribed in my presence and sworn to before me by John A. Potucek, this 1st day of May A. D. 1933. Signed: Jessie Haverstock, Clerk of the District Court of Sumner County, Kansas. By Edith Cook, Deputy.

No. 2120

STATE OF KANSAS, Plaintiff

vs.

C. H. COCHRAN, Defendant

Witnesses for the State: M. R. Evans, Hubert Richards, Guy Neal, Lena Rush, H. C. Foster, Elmer Holt, John H. Gunn, Harold Sanner, Arch Hendon, Geo. Slathewe, J. C. Shearman, L. L. Brown.

INFORMATION—Filed May 1, 1933

Jessie Haverstock, Clerk of the District Court. By Edith Cook, Deputy. John A. Potucek, County Attorney. —— ——, Attorney for the State. —— ——, Attorney for the Defendant.

[fol. 59] IN THE DISTRICT COURT OF SUMNER COUNTY, KANSAS

No. 2120

STATE OF KANSAS, Plaintiff,

vs.

C. H. COCHRAN, Defendant

Journal Entry of Trial

And now on this 15th day of May, 1933, the same being one of the regular judicial days of the May 1933 term of this Court, this case comes on for hearing and for trial as per assignment.

The plaintiff appears by John A. Potucek, County Attorney, Sumner County, Kansas, and the defendant appears in person and by his counsel Harry B. Davis, Esq. of Anthony, Kansas.

The defendant waives arraignment and enters his plea of 'not guilty' to the commission of the offense of forgery in the second degree as charged in the first count of the Information and he enters his plea of 'not guilty' to the commission of the offense of forgery in the second degree, as charged in the second count of the Information.

A jury is duly and legally empanelled and sworn to try the case. The opening statement is made, the plaintiff's witnesses are sworn and testify and evidence introduced and the State rests. Defendant's opening statement is made, [fol. 60] evidence introduced, and the defendant rests. The jury is instructed in writing and argument of counsel made and the jury retires in charge of the sworn bailiff to deliberate.

Whereupon, later on said date the jury reports in open Court that they have agreed upon a verdict, which verdict is handed to the Court and in turn read by the Clerk, the same being in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF SUMNER COUNTY, KANSAS

No. 2120

THE STATE OF KANSAS, Plaintiff,

vs.

C. H. COCHRAN, Defendant

VERDICT

We, the jury empanelled and sworn in the above entitled cause, do, upon our oaths, find the defendant, C. H. Cochran, not guilty of forgery in the second degree as charged in the first count of the Information.

We, the jury empanelled and sworn in the above entitled cause, do, upon our oaths, find the defendant, C. H. Cochran, guilty of forgery in the second degree as charged in the second count of the Information.

Louis Larson, Foreman.

Whereupon, the jury is discharged and the case is continued for the matter of passing sentence.

ORDER OVERRULING MOTION FOR NEW TRIAL

And now on the 20th day of May, 1933, this case comes on for further hearing upon the motion for a new trial as filed by the defendant and the Court, after hearing said motion and argument of counsel, finds that the same should [fol. 61] be and the same is hereby overruled.

ORDER OVERRULING MOTION IN ARREST OF JUDGMENT

Whereupon, the matter comes on for further hearing upon the "Motion In Arrest of Judgment" as filed by the defendant, and after hearing said Motion and argument of counsel, the Court finds that said Motion should be and the same is hereby overruled.

Whereupon, the Court advises the defendant as to the verdict and the matter of passing sentence upon the defendant as an habitual criminal is continued.

JUDGMENT AND SENTENCE

And now on this 29th day of May, 1933, the same being one of the regular judicial days of this Court, this case comes on for hearing upon the matter of passing sentence against the defendant upon the findings of the jury.

The plaintiff appears by John A. Potucek, County Attorney, Sumner County, Kansas, and the defendant appears in person and by his counsel, Harry B. Davis, Esq. The plaintiff introduces further evidence and rests and the Court after hearing the evidence and being well and truly advised in the premises, finds that the defendant has heretofore been convicted of a felony in the District Court of Sumner County, Kansas, and has served a term in the Kansas State Penitentiary, Lansing, Kansas, and the defendant, C. H. Cochran, has committed a felony in the State of Oklahoma, and has served a term in the Oklahoma Reformatory at Granite, Oklahoma, being sentenced from Tulsa County District Court, for the offense of stealing an automobile, and the Court finds that the defendant, C. H. Cochran, has been convicted and sentenced for two other, separate and distinct felonies, and that the conviction in this case is a third conviction of the defendant, C. H. Cochran for a felony, and that the defendant is an habitual criminal.

Whereupon, inquiry is made of the defendant if he has any legal cause to show why judgment and sentence should not be pronounced against him upon the findings of the jury, and there appearing no legal cause,

[fol. 62] It Is Therefore Considered, Ordered and Adjudged that the defendant, C. H. Cochran, be committed to the Kansas State Penitentiary at Lansing, Kansas, to serve a term therein at hard labor, during his life, for the commission of the offense of forgery in the second degree

as charged in the second count of the Information, and the defendant having been convicted for a third time, of felony, and he being an habitual criminal, and that he pay the costs of the prosecution as taxed by the Clerk of the Court.

It is further ordered that the Sheriff transport the defendant, C. H. Cochran to said Institution aforesaid at his earliest convenience.

(Signed: Wendell Ready, District Judge.

Signed: O. K. John A. Potucek, County Attorney.
Signed: O. K. Harry B. Davis, Attorney for Defendant.

CERTIFICATE OF COPY

STATE OF KANSAS,
Sumner County, ss:

I, Jessie Haverstock, Clerk of the District Court in the Twenty-fifth Judicial District of the State of Kansas, sitting for the County aforesaid, do hereby certify the above and foregoing to be a true, full and complete copy of *Journal Entry* in the within entitled case No. 2120 as the same remains *on file* in my office.

Witness my hand and the Seal of said Court, affixed at my office in Wellington, this 29th day of May, 1933.

Signed: Jessie Haverstock, Clerk. By Edith Cook, Deputy. (Seal.)

[fol. 63]

JOHN A. POTUCEK
County Attorney of Sumner County
Wellington, Kansas.

Phones: Court House 195. Downtown Office 7.
Clara Bauman, Secretary

May 31, 1933.

Mr. Kirk Prather, Warden, Kansas State Penitentiary, Lansing, Kansas.

In Re: State of Kansas vs. C. H. Cochran

DEAR SIR:

This and the accompanying papers will serve to introduce to you one C. H. Cochran, who was recently convicted by

a jury in our District Court, for the commission of the offense of forgery in the second degree, and he was sentenced to your Institution for life as an habitual criminal.

This party served at your Institution, beginning on or about September, 1928, for jail break, he having escaped from jail here while he was awaiting trial for committing the offense of disposing of mortgaged property.

For your information, I will state that this party has heretofore served a term in the Oklahoma Reformatory for auto theft, he has also served a term for burglary in the State prison at Stillwater, Minnesota, having served there sometime during 1917. It is my understanding that he also served a term at the State Reform School at Miles City, Montana, growing out of some fraudulent check deal, however, the party there was C. A. Cochran and I have not checked that information definitely.

There is a warrant out for this party also on a forgery charge in Barber County, Kansas.

I wish to state that this individual will do anything to obtain his freedom. He escaped from our jail, as heretofore stated, and tried to escape, just recently, from the Harper County Jail, and did escape from the Oklahoma Reformatory while he was incarcerated there. The Sheriff explains to me that he was trying to saw his way out of jail here within the last several days.

He is a 'jack of all trades' and was operating a cleaning and pressing plant in Harper, Kansas and at that time obtained possession of a trailer by false and fraudulent representations and skipped the country, taking his possessions with him, supposedly in this trailer, and was heard of, indirectly, in Montana, however, he was arrested in Arkansas, where he was living with a married woman formerly of Attica, Kansas, and at the time of his arrest he was engaged in the practice of medicine.

I would suggest that you keep this party under close supervision at all times, otherwise he will cause you trouble.

Yours very truly, Signed: John A. Potucek, County Attorney.

JAP/AW

[fol. 64] AFFIDAVIT OF JOHN A. POTUCEK

John A. Potucek, being duly sworn on oath, deposes and says:

That he is a duly licensed and practicing attorney at law in the City of Wellington, Kansas, and County Attorney of Sumner County, Kansas, and that he was County Attorney of Sumner County, during the year 1933, and directed the prosecution of one C. H. Cochran, who was charged and tried in the May 1933 Term of said District Court of Sumner County, Kansas, upon an Information, charging two counts of Forgery in the Second Degree.

Affiant further states that a Warrant was issued in the Justice Court of James H. Large, a Justice of the Peace in and for the City of Wellington Township, in Sumner County, Kansas, on December 8, 1932, charging the said C. H. Cochran with the commission of the offense of Forgery in the Second Degree, in two counts, a copy of said Warrant being attached to this Affidavit.

That, pursuant to said Warrant, the defendant, C. H. Cochran, was taken into the custody of the officers of Sumner County, Kansas, having been delivered to said officers by the Sheriff of Harper County, Kansas, where the said C. H. Cochran had been incarcerated pending his trial on a charge of Forgery in the District Court of Harper County, Kansas, and from which jail, the said defendant attempted to escape while awaiting trial.

That said defendant was arraigned in the Justice Court of A. L. Chase, successor in office to James H. Large, on April 12, 1933, and the preliminary hearing set for April 20, 1933, at ten o'clock A. M., and bond fixed for the appearance of the defendant, in the sum of One Thousand Dollars ($1,000.00), and in default of bond, the defendant was committed to the *jail* of Sumner County, Kansas. That a [fol. 65] preliminary hearing was duly had on the 20th day of April, 1933, in the Justice Court of A. L. Chase, and affiant appearing as County Attorney, and the defendant, C. H. Cochran, appearing in person, and by his attorney, Harry B. Davis, of Anthony, Kansas. After the introduction of evidence, the Court found that the offense of Forgery, as charged in the First and Second Counts of the Complaint, had been committed, and that there was probable cause to believe that the defendant, C. H. Cochran, committed said offenses, and said defendant was bound over to

the District Court of Sumner County, Kansas, to answer said charges, and bond for Defendant's appearance at the first day of the next term of said District Court of Sumner County, Kansas, was fixed in the sum of One Thousand Dollars ($1,000.00), and in default of said bond, the defendant to be committed to the jail of Sumner County, Kansas.

Affiant further states that thereafter, pursuant to assignment, the case of the State of Kansas vs. C. H. Cochran, came on for hearing and for trial, on the 15th day of May, 1933; the affiant appearing as County Attorney of Sumner County, Kansas, and the defendant appearing in person and by his counsel, Harry B. Davis of Anthony, Kansas. That a certified copy of said Journal Entry, which truly and correctly recites the proceedings and the manner in which said trial was conducted, is attached hereto and made a part hereof.

The affiant f rther states that he has read a copy of the Application for The Writ of Habeas Corpus, filed on behalf of the said C. H. Cochran, in the United States District Court for the District of Kansas, at Topeka, Kansas, together with petitioner's Brief and Authorities, Preface and Petitioner's Statement of Facts. Affiant states that the said allegations relative to the misconduct on the part of the Honorable Wendell Ready, Judge of the District Court of Sumner County, Kansas, are untrue, and that likewise the statements alleging misconduct on the part of the County [fol. 66] Attorney, and in the matter of improper argument and unlawful selection of a jury, are untrue. Affiant states that, as a matter of fact, in the closing argument, the County Attorney, who was this affiant, stated to the jury, that it was incumbent upon the State of Kansas to prove each and every elemgnt of the crimes charged, and that it was likewise the duty of the State of Kansas to prove that the offenses were committed in Sumner County, Kansas. That the evidence did not disclose the actual manual forgery of the check in question, to have been committed in Sumner County, Kansas, and that the jury should therefore find the defendant "not guilty" on said First Count of the Information. In affiant's comment to the jury, he mentioned that the evidence disclosed that the check was in the handwriting of the defendant, as was the indorsement thereon, and if the jury believed that evidence to be true, then the defendant knew that the check was a forged check.' That

there was testimony that the defendant passed the check to the complaining witness for a valuable consideration, and if the jury believed such evidence and believed the other evidence introduced by the State, then that they should properly find him guilty of the commission of the offense as charged in the Second Count of the Information.

Affiant further states that the jury did find the defendant 'not guilty' of the commission of the offense in the First Count, and 'guilty' upon the Second Count, all as shown by the copy of the Journal Entry attached hereto.

Affiant further states that the defendant was present at all times during the trial, except that he was not present with the jury during their deliberations, and that he was present within the Court Room and represented by his attorney, at the time the Motion for a New Trial and Motion in Arrest of Judgment, were argued and heard and overruled by the Court, all as appears in the Journal Entry [fol. 67] hereinabove mentioned and referred to, and full faith and credit should be given herein to the official acts of the District Court of Sumner County, Kansas.

John A. Potucek, Affiant.

Subscribed and sworn to before me this 8th day of January, 1941. Alpha Ate, Notary Public.

My Commission expires on the 22nd day of February, 1943.

[fol. 68] WARRANT

STATE OF KANSAS,
Sumner County, ss:

The State of Kansas, to the Sheriff or any Constable in Sumner County.

Whereas, complaint in writing, under oath, has been made to me, and it appearing that there are reasonable grounds for believing that on or about the and within two years of the filing of the complaint herein, 1932, in Sumner County, and State of Kansas one C. H. Cochran did then and there, Unlawfully, Feloniously forge, counterfeit and falsely make, one certain check in words and figures, as follows, to-wit:

The First National Bank, in Harper

Harper, Kansas, 10-16-1932, Pay to the Order of Odorless Dry Cleaners, Endorsed on Back: Odorless Cleaners, By,

C. H. C.; Such check to be drawn upon the First National Bank of Harper, Kansas, a bank organized and incorporated under the laws of the United States of America.

Second Count

And M. R. Evans, being duly sworn on oath, deposes and says for a second, further and different count, that on or about the 17th day of November, 1932, in Sumner County, Kansas, one C. H. Cochran, did then and there unlawfully, feloniously sell and deliver to M. R. Evans, for a valuable consideration, to-wit: goods, wares and merchandise, and lawful currency and money of the United States of America, of the total value of $12.60, one certain falsely made, forged and counterfeited check, which said check was and is in words and figures as follows, to-wit:

The First National Bank in Harper

Harper, Kansas, 10-16, 1932, Pay to the Order of Odorless Dry Cleaners, $12.60, Twelve and 60/100 Dollars, signed: A. J. Messinger. Endorsed on Back: Odorless Cleaners, by C. H. C:

Such check purporting to be drawn upon the First National Bank of Harper, Kansas, a bank incorporated under the laws of the United States of America; and the said C. H. Cochran knowing such check to be falsely made, forged and counterfeited, and delivering the same, with the intent to have the same uttered and passed.

All contrary to the form of the Statutes in such cases made and provided, and against the Peace and Dignity of the State of Kansas.

[fol. 69] You are therefore Commanded, forthwith, to arrest said C. H. Cochran and bring him before me, at my office in said County, to be dealt with according to law; and then and there return this writ.

Witness my hand, at my office in city of Wellington, in said County, this 8th day of December 1932. James H. Large, Justice of the Peace.

[fol. 70] (Copy)

U. S. Bureau of Investigation—Department of Justice—
Washington, D. C.

June 9, 1933.

John Edgar Hoover, Director.

Warden, State Penitentiary, Lansing, Kansas.

Dear Sir:

Referring to your print received June 7, 1933, regarding C. H. Cochran, #3608, the following is an abstract of subject's fingerprint record on file in the United States Bureau of Investigation:

Subject as Chas. H. Cochran, #5672, received State Prison, Stillwater, Minn., Oct. 13, 1917, from Aitkin County, crime burglary 3rd degree, sentence indeterminate.

As Charles H. Cochran, #1787, arrested PD, Tulsa, Okla., Dec. 1, 1920, charge grand larceny; as C. H. Cochran, #2805, received State Reformatory, Granite, Okla., Dec. 28, 1920, from Tulsa County, crime stealing an automobile, sentence 5 years.

As Charles H. Cochran, #3145, arrested PD, Oklahoma City, Okla., Nov. 18, 1925, charge investigation, City Jail.

As Charles Harper Cochrane, #4394-D-5, arrested PD, Wichita, Kansas, July 5, 1928, charge vagrancy and investigation—bad check, disposition not given.

As C. H. Cochrane, #605, received State Prison, Lansing, Kansas, Sept. 18, 1928, from Sumner County, crime breaking jail (Habitual) sentence 2 to 4 years.

Refer to File #21358.

As Ch. H. Cochran, #—, arrested SO, Anthony, Kansas, Feb. 15, 1933, charge forgery and theft, dismissed—immediately arrested by the Authorities of Sumner County on a charge of forgery; as C. H. Cochran, #—, arrested SO, Wellington, Kansas, April 12, 1933, charge bad checks—forged; as C. H. Cochran, #1, #3608, received State Penitentiary, Lansing, Kansas, May 31, 1933, from Sumner County, crime forgery 2nd degree (habitual), sentence life.

Very truly yours, J. E. Hoover, Director.

As C. H. Cochran, #1205, arrested PD Butte, Montana, Jan. 2, 1919, charge forgery, disposition not given.

Copy to Attorney General's office, Topeka, Kansas.
SO, Wellington, Kansas.

S.O. Anthony, Kansas.
PD, Wichita, Kansas.
PD, Oklahoma City, Okla.
St. Ref., Granite, Okla.
PD, Tulsa, Okla.
PD, Butte, Montana.
SP, Stillwater, Minn.

[fol. 71] BRIEF

Generally speaking, certified copies of the criminal action, sentence, information, journal entry and other documents which are a part of the record, cover the points which the petitioner and appellant seeks to raise in his application and on appeal.

It is obvious from a scrutiny of the various applications he has filed, that there has been a total lack of consistency in regard to the grounds on which he seeks his release from the Kansas State Penitentiary. This is apparent in the pleadings filed in the intsant case.

The most obvious one which is directed to the attention of this Court, and one which he stresses in this case, is that certain officers or employees of the Kansas State Penitentiary intercepted certain correspondence or denied him the privilege of mailing such correspondence, which was in the nature of an appeal directed to this Court. This transpired, according to his own statements, from 1933 and prior to October, 1935.

In October, 1935, this petitioner and appellant filed an application for a writ of habeas corpus with this Court, which was denied in January, 1936, Cochran v. Simpson, supra. He never alluded to this important point or made issue thereof on this first application. Now, some years later, he presses it as a ground for his release through habeas corpus. He has offered no proof or supporting evidence that this charge is true, only his own statements of something that occurred at the State Penitentiary years ago, upon which he himself is not clear.

Since the time when he was sent to the State Penitentiary in 1933, three administrations have had charge of that institution. They deal with thousands of prisoners over a [fol. 72] period of years, and now one inmate seeking his release from the State Penitentiary in the nature of a habeas corpus proceeding, failing to raise an issue which he alleges

transpired months prior to an earlier application, comes into this Court and makes ambiguous and unsubstantiated charges against officers and employees of the State Penitentiary.

Another outstanding weakness in the petitioner and appellant's contention for the granting of the writ is that he was represented throughout the proceedings in the Sumner County District Court by reputable counsel, and the record shows that no attempt was made immediately following conviction to appeal from the sentence and conviction of the court.

This petitioner and appellant has charged the courts and other law enforcing officers with misconduct and bad faith. He has directed letters to members of the Supreme Court, to the Attorney General's office, to certain federal officers and others in the interest of his release from the State Penitentiary. In 1937 the Attorney General's office made an informal investigation of his complaints and found them without foundation.

This petitioner and appellant was charged in an information with the commission of a felony. He was tried before a jury, was represented by able counsel, convicted and sentenced to the State Penitentiary under the laws of the state of Kansas. The record in the case speaks for itself.

Attention also must be directed to the affidavits which he submits to this Court: One from another inmate, Frank Boaz, who too has filed several applications in both the [fol. 73] United States District Court and the Kansas Supreme Court, and which have been either denied or dismissed; also an affidavit of another convict confined in the Kansas State Penitentiary, C. C. Crebs, who now has pending before this Court an application for a writ of habeas corpus.

One other matter which the respondent wishes to direct to the attention of the Court is that in the "abstract" of the appellant, in the appeal from the District Court of Leavenworth County, Kansas, he sets out material and allegations which are not substantiated by the record. He also makes certain statements pertaining to the record which are gross misrepresentations and which are not supported by any competent evidence.

Although in its entirety the so-called "abstract" is the presentation by the petitioner and appellant of his side of

the case, its contents are not to be found in the record nor substantiated by affidavits or other evidence. He likewise charges that a previous Attorney General of the State of Kansas and other public officials have set up a "perpetual blockade to prevent the timely appeal and filing of proper procedures;" also that the "members of the Supreme Court of Kansas have referred your petitioner to the parties who set up the perpetual blockade that prevented your petitioner's timely appeal in filing of proper procedures," all of which is not sustained and are erroneous assumptions.

The said petitioner and appellant herein, C. H. Cochran, having been committed to the custody of your respondent, was and now is detained by him under and by virtue of a judgment, sentence and commitment duly entered and issued out of the District Court of Sumner County, Kansas.

[fol. 74] Wherefore, respondent prays that the application and appeal of the petitioner and appellant be denied and dismissed.

Respectfully submitted, Jay S. Parker, Attorney General; Jay Kyle, Assistant Attorney General, Attorneys for Respondent.

[fol. 75] [File endorsement omitted.]

[fol. 76] IN SUPREME COURT OF KANSAS

No. 35156

In the Matter of C. H. COCHRAN, for the Writ of Habeas Corpus, Petitioner,

vs.

MILTON F. AMRINE, Warden, Kansas State Penitentiary, Respondent and Appellee

PETITIONER'S ANSWER TO RESPONDENT'S BRIEF AND ABSTRACT —Filed April 23, 1941

Comes now your petitioner and appellant in answer to the Respondents brief and abstract.

Your petitioner alleges that the petitioners brief and Abstract are true in every detail, and that t' petitioner

can prove and substantiate each and every statement set forth within the said petitioners brief and abstract.

The petitioner alleges that the respondents brief and abstract is prejudicial and untrue.

Petitioner further alleges that respondent is guilty of compounding a felony, and wilfully and deliberately foreclosed lawful process by the acts of the State Authorized agents.

Petitioner is able to prove that for over the peripd 7 years, he had been denied lawful redress, counsel and timely appeal.

Petitioner can show by records that he was forced to "injoin" Representative from such acts now on file in case #421 H. C. United States District Court, Topeka, Kansas.

Respectfully Submitted, C. H. Cochran, Petitioner and Appellant Pro; Se.

[File endorsement omitted.]

[fol. 77] IN SUPREME COURT OF KANSAS

No. 35,156

In re C. H. COCHRAN, Petitioner for a Writ of Habeas Corpus, Appellant,

v.

MILT F. AMBINE, etc., Appellee

MINUTE ENTRY OF SUBMISSION—May 5, 1941

This cause comes on for hearing upon the appeal papers and the abstract of record from the district court of Leavenworth County and thereupon, said cause is submitted upon the briefs of both parties and taken under advisement by the court.

[fol. 78] IN SUPREME COURT OF KANSAS

Re: No. 35156

In the Matter of C. H. COCHRAN, for the Writ of Habeas Corpus, Petitioner,

vs.

MILTON F. AMRINE, Warden, Kansas State Penitentiary, Respondent

PETITIONERS OBJECTIONS TO PROCEDURE OF COURT—Filed May 10, 1941

Comes now, your petitioner to the above entitled cause, and duly objects to the courts order that cause be brought on for decision by briefs submitted by both parties for the following reasons, Viz:

I

The petitioner shown only a part of such evidence to shew all the issues involved.

II

That the court took unlawful advantage of the petitioner by its own court order, in misleading the petitioner to believe that he would be permitted right of his defense and witnesses to show pertinant violations of his right all of which he he never notified of deniel of "Motion for Appearance."

III

The petitioner objects to this "Blind" Arbitrary and discretionary method, in that the petitioner "Charges" that during the time petition was filed in the court, The respondent "Did" Confiscate, seize and impounded unlawfully, pleading evidence, affidavits and other papers addressed to the court, this act should have been permitted as a fact in the court to show such irregularities as has been conteniously exercised unlawfully.

IV

The petitioner objects to the partial and prejudicial acts of the court, in that the courts denial of witnesses to

show and prove pertinant issues in petition: The courts denial of defense by arbitrary conclusions of facts and not by testimony pertinant and material in establishing a fact.

V

The courts attitude towards the petitioner "motion for appearance", and a "Writ of habeas corpus" directing the court commanding petitioners appearance.

VI

The petitioner objects to the procedure of the court on grounds that it failed to conform with the constitution, suspends Habeas corpus, denies the indigent Citizen accessibility to the Court, lawful right of defense and judical inquiry.

Therefore: Your petitioner and appellan, objects to each and every act of the court in the foregoing reasons, to which your petitioner excepts.

Respectfully Submitted, C. H. Cochran, Petitioner (Pro Se).

[File endorsement omitted.]

[fol. 79] IN SUPREME COURT OF KANSAS

No. 35,156

In the Matter of C. H. COCHRAN for a Writ of Habeas Corpus, Petitioner and Appellant,

v.

MILTON F. AMRINE, Warden of the Kansas State Penitentiary, Respondent and Appellee

JUDGMENT—June 7, 1941

This cause comes on for decision and thereupon, after due consideration by the court, it is ordered and adjudged that the Writ of Habeas Corpus prayed for herein be denied.

It is further ordered that this appeal be dismissed at the cost of the petitioner ~~and appellant~~, taxed at $—, and hereof let execution issue.

Harvey, J., delivered the opinion of the court, all the justices concurring.

[fol. 80] IN SUPREME COURT OF KANSAS

No. 35,156

In the Matter of C. H. COCHRAN for a Writ of Habeas Corpus, Petitioner and Appellant,

v.

MILTON F. AMRINE, Warden of the Kansas State Penitentiary, Respondent and Appellee

Syllabus By the Court

1. While courts are liberal in entertaining petitions in habeas corpus proceedings, questions once fully considered and determingd, in the absence of changed circumstances, should be regarded as settled.

3. The records of courts are not set aside upon the unsupported statements of a defeated litigant.

Original proceeding in habeas corpus. Opinion filed June 7, 1941. Writ denied.

C. H. Cochran, Pro se.

Jay S. Parker, Attorney General, and Jay Kyle, Assistant Attorney General, for the respondent.

OPINION—Filed June 7, 1941

[fol. 81] The opinion of the court was delivered by

HARVEY, J.:

This is an original proceeding in habeas corpus. The petitioner alleges he is an inmate of our state penitentiary, where he is being held under a commitment issued May 29, 1933, out of the district court of Sumner county, authorizing his imprisonment for life, and that the commitment is void for the following reasons: The record shows (1) jurisdiction of the court to issue the commitment "was procured thru the reckless contrivance in the pretense of a trial which in and by itself, deprived your petitioner of every right secured to him by the State and Federal Con-

stitution and precluded * * * 'Due Process of Law.'" (2) That the court went beyond the bounds of judicial discretion in overruling his motion without a hearing. (3) That the duly authorized officers unlawfully suppressed his appeal documents and deprived him of his lawful rights of appeal. (4) That after his imprisonment the then warden and other officers of the prison suppressed and refused to permit him to mail documents pertaining to an appeal and to habeas corpus. That the records will show (1) that he has consistently been deprived of due process of law by the courts and the officers and agents of the state; (2) that his previous petitions have been dismissed by the courts of the state, without recourse to the record, upon the unfounded assumption the record shows his conviction by an orderly trial within the requirements of due process of law; and (3) that the officers and agents of the state are exercising unlawful authority over your petitioner, obtained by methods contrary to due process of law.

All these allegations are made in the most general terms, void of any specifically alleged, controvertible facts; yet, [fol. 82] in order that petitioner might not be deprived of any of his rights, we waived our rules respecting a deposit for costs and the printing of abstract and brief, allowed the petition to be filed, and directed respondent to file a return. Respondent has prepared and filed his return which includes pertinent records of the trial, and a copy thereof was served upon the petitioner, who now complains that the records have been brought before the court; also, briefs have been filed by both parties.

Except in one particular, later to be noted, the record shows none of the facts alleged by the petitioner. On the contrary it shows that on December 2, 1932, a complaint in writing was filed before a justice of the peace of Sumner county, charging defendant in one count with the forgery of a described check, and in a separate count with the uttering of the check in Sumner county. A warrant issued on this complaint was delivered to the sheriff, who on April 12, 1933, arrested the petitioner in Harper county and brought him into Sumner county. On the 20th day of April, 1933, a preliminary examination was held before the justice of the peace, at which the state was represented by the county attorney and the defendant appeared in person and by his attorney, apparently one chosen and employed by him. As a result of that hearing he was bound over for trial to the

district court. Thereafter an information was duly filed charging the same offenses charged in the warrant. The case came regularly on for trial in the district court on May 15, 1933. Defendant was present in court and represented by counsel throughout the trial. Being unable to prove the forgery was committed in Sumner county, the county attorney in effect withdrew that count from the jury. A verdict of guilty was rendered upon the second [fol. 83] count. On May 20th defendant's motion for a new trial and his motion in arrest of judgment came on to be heard. These were considered and overruled. On May 29, 1933, there was a hearing upon the sentence. Upon evidence produced at that time by the county attorney the court found defendant previously had been convicted of two other separate and distinct felonies, and under the statute (G. S. 1935, 21-107a) he was sentenced to life imprisonment.

There is nothing in the record to indicate that the petitioner attempted to appeal his case to the supreme court. There is nothing in the record of the proceedings in the court below to indicate any irregularity in the petitioner's trial and conviction, and certainly nothing to indicate that his commitment was void for any reason.

Soon after the petitioner was confined in the penitentiary he made some effort to file a habeas corpus petition. Under rules then prevailing at the penitentiary these were not permitted to be sent out, and this much of the allegations of the petition in this case has some basis. These rules did not prevail long, however, and in October, 1935, he filed a petition for habeas corpus in this court. That was duly considered and a carefully prepared opinion was filed denying the petition. (Cochran v. Simpson, 143 Kan. 273, 53 P. 2d 502.) Some of the questions sought to be raised in this proceeding were presented to the court at that time. All of them might have been and should have been presented in that proceeding. While a court should be liberal in entertaining habeas corpus proceedings, there is no reason to reconsider the same questions repeatedly.

[fol. 84] In addition to the cases in this court the petitioner has filed in the federal court two petitions for habeas corpus, each of which was dismissed by the court because it failed to present a substantial federal question. Also he has had one or more cases in the district court of Leavenworth county, where the same result was reached. We entertain this case only because of plaintiff's allegations respecting

the records in the trial court. No evidence has been offered to support those allegations other than the bare statement of the petitioner. The records of courts are not set aside upon the unsupported statements of a defeated litigant.

The writ prayed for is denied.

Filed under the same docket number of this proceeding is a notice of appeal from the judgment of the district court of Leavenworth county rendered December 11, 1940, and a copy of a journal entry which recites a finding of the court that the petition for habeas corpus then being considered does not state facts sufficient to warrant the issuing of the writ. Nothing further is filed respecting that appeal. The petition ruled upon by the district court is not before us. The appeal is therefore dismissed.

[fol. 85] IN SUPREME COURT OF KANSAS

In Re: 35,156

In the Matter of C. H. COCHRAN for the Writ of Habeas Corpus, Petitioner,

vs.

MILTON F. AMRINE, Warden Kansas State Penitentiary, Respondent

MOTION FOR REHEARING—Filed June 27, 1941

Comes now, C. H. Cochran your petitioner, and moves the above styled Court to hear the above mentioned cause, which was reviewed on brief and abstract over the objection of petitioner by order of the Court, and your petitioner comes now and moves the court to hear the said cause for the following reasons; to-Wit:

I

The Supreme court denied the petitioner the right to a judicial inquiry held as the only admissible procedure in Habeas Corpus.

II

The petitioner charges that he has proof that affidavits and records were removed from petition or application, by

malicious intent to withhold evidence from the court, after said petition or application had been filed in the Court.

III

The petitioner can show by evidence and testimony that pleadings and motions were illegally, *feloneously confiscated, impounded* and never filed, and that the petitioner notified the court clerk that said motions, evidence and pleading were purposely withheld from the court and denied the petitioner the right to enter his lawful defense.

IV

The petitioner contends and shows that the procedure of the court has prejudicially proceded in a most unusual manner in denying witnesses, testimony, affidavits and other records to be introduced in his behalf and to discredit such records or purported records entered by the respondent.

V

The petitioner charges and can show by record that the Clerk of the Supreme Court of Kansas, *Knew* that such papers and pleading were stolen confiscated and unlawfully impounded and that the Clerk of Court ask to report the incident to the court, which if it was reported, the court failed to act and bring such records forth.

[fol. 86]

VI

The petitioner respectfully contends that the Respondent has since that the filing of the application; has entercepted each and every piece of evidence Submitted to the Court, and that proof can and will be offered to show each and every allegation set out therein.

Therefore: Your petitioner duly notifies that court of such actions, and moves the court to reopen and hear the cause that said cause shall have a fair hearing and produce evidence to show that the records have been unlawfully impared, unlawfully altered and striped of petitioner's evidence, and the petitioner's respectfully moves and prays that the Supreme Court of Kansas re-open the case and permit petitioner to enter evidence and such testimony of

witnesses to support his petition and application and enter his lawful defense.

Respectfully Submitted, C. H. Cochran, Movant. Pro Se.

[File endorsement omitted.]

[fol. 87] IN SUPREME COURT OF KANSAS

Re: 35,156

In the Matter of the Application of C. H. COCHRAN for the Writ of Habeas Corpus, Petitioner,

v.

MILTON F. AMRINE, Warden Kansas State Penitentiary, Respondent

MOTION FOR STAY OF JUDGMENT—Filed June 27, 1941

Comes now, your petitioner of the above entitled cause and moves for the stay of judgment of the above entitled cause; for the reasons set out as follows: (1) The petitioner was not given a hearing after the ruling of the United States Supreme Court and which was held to be the only admissible procedure in Habeas Corpus. (2) That the Respondent extracted from the petition or caused to be extracted evidence and affidavits Supporting petition, and confiscated pleadings, Motions and other papers addressed to the clerk of Supreme Court of Kansas. (3) That all Pleading and motions never reached the court or placed before the court, having direct bearing on the case. (4) Notification to the effect that case was not completed, in that Respondent feleoneously stole and "Impounded" evidence and pleadings, mailed to the clerk of the Supreme Court and filed. (5) That the right of Witnesses to support petition and other Subpoenas of records. (6) The rigt of defense was abusive, Misleading, and disadvantages to the petitioner eause. (7) That County attorneys affidavit has been disproved by pertinant evidence and that such affidavit was prejudicial and untrue.

The petitioner can show by record that such has been the case in his cause and therefore; Moves and prays for stay of Judgment in the above entitled cause.

Respectfully submitted, C. H. Cochran, Pro Se.

[File endorsement omitted.]

[fol. 88] IN SUPREME COURT OF KANSAS

Re: 35,156

In the Matter of C. H. COCHRAN for the Writ of Habeas Corpus, Petitioner,

vs.

MILTON F. AMRINE, Warden Kansas State Penitentiary, Respondent

MOTION TO SUBPOENA WITNESSES—Filed June 27, 1941

Comes now the petitioner of the above entitled cause and moves the court to Issue subpoena's and Summons into that court for testimony material in the defense of the petitioner, the following Witnesses.

Mrs. Emm L. Hinton, 604 No. 10th st., Kansas City, Kansas.
Mrs. Daisy Ried, 2528 No. 5th, Kansas City, Kansas.
Mr. J. Sharp, 437-Le Clide St., Wichita, Kansas.
Lacey M. Simpson, McPherson, Kansas.
E. M. Stubblefield, Brighton, Illinois.
Mrs. A. S. (Cochran) Heromine, Oklahoma City, Oklahoma.
Elmer Madsen, Anthony, Kansas.

Every party here-to-fore mentioned are material in support of petition.

Therefore: Your petitioner moves and urges that the Court issue such orders that said parties shall be present at the hearing.

Respectfully submitted, C. H. Cochran, Movant, Pro Se.

[File endorsement omitted.]

[fol. 89] AFFIDAVIT OF EMMA E. COCHRAN

I, Emma E. Cochran, being duly sworn states, on June 9, 1933, Kansas Prison Officials seized from me, C. H. Cochran's Appeal papers, refused to let me file them for him in the Supreme Court.

Emma E. Cochran, Affiant.

Subscribed and sworn to before me this 11th day of October, 1934. Byron E. Taylor, Notary Public. My commission expires Dec. 7, 1937. (Seal.)

AFFIDAVIT OF EMMA L. HINTON

STATE OF KANSAS,
County of Wyandotte, ss:

I, Emma L. Hinton, being of lawful age and duly sworn, deposes and states that on or about June 1, 1934, C. H. Cochran, an inmate of the Kansas State prison, by written consent gave me power of attorney to act in his behalf in the Supreme Court of Kansas to file and execute all transactions in that court. On June 15th, Mr. E. M. Stubblefield, Deputy Warden, called me into his office and forbade me to take out any more papers belonging to C. H. Cochran. I therefore could do nothing further. After Mr. Kirk Prather came in as Warden I was allowed to take the papers for keeping and they still remain in my hands.

(Signed) Emma L. Hinton, Affiant.

Subscribed and sworn to before me this 28th day of August, A. D. 1941. (Signed) El Freda McCullough, Notary Public. My commission expires Sept. 4, 1940. (Seal.)

AFFIDAVIT OF C. SCUDDER

STATE OF KANSAS,
County of Leavenworth, ss:

I, Charly Scudder, being duly sworn, make the following statement that I did on or about the 16th day of October, 1933, issue worthless check to the Odorless Dry Cleaners,

drawn on the First National Bank of Harper, Kansas, paid to order of the Odorless Dry Cleaners of that city, the amount of $12.60, and endorsed by me as A. J. Messenger, pay to the driver of the Or-dless Dry Cleaners truck, paying account of $6.50, and receiving remainder in cash. I did willfully and intentionally defraud the firm and absconded before payment of check.

Affiant further swears not.

C. Scudder, Affiant.

Sworn to and subscribed before me, this 1st day of March, 1935. R. D. Payne, Notary Public. My commission expires Apr. 18, A. D. 1937. (Seal.)

[fol. 90] AFFIDAVIT OF FRANK BOAZ

STATE OF KANSAS,
County of Leavenworth, ss:

I, Frank Boaz, being of lawful age, after being duly sworn, depose and aver that on or about the 14th day of June, 1933, C. H. Cochran asked me to offer correction to errors, if any, in his appeal documents. After he had finished reading the papers he stated that he was going to file them and went to the Deputy's office. Upon his return he informed me that his papers had been confiscated by the Deputy Warden.

About a year later C. H. Cochran complained again that he had been restrained from filing his appeal papers.

The affiant swears no further.

Frank Boaz, Affiant.

Subscribed and sworn to before me this 9th day of Sept., A. D. 1940. R. D. Payne, Notary Public. My commission expires April 18, 1941. (Seal.)

AFFIDAVIT OF SUSIE E. HARPER

STATE OF MISSOURI,
County of Lawrence, ss:

I, Susie E. Harper, being duly sworn, depose and state that on the 9th day of June, 1933, I visited C. H. Cochran

at the Kansas Prison, and after he had turned over his appeal documents to a lady there, I knew to be his mother, I saw the Deputy Warden come from the office and demand the papers, refused to return them and ordered the aged lady from the prison and I heard him tell C. H. Cochran that he could not now nor ever file his papers, then told an officer to punish him. I have not visited him since as the treatment of visitors did not appear Civil. I have known C. H. Cochran for 30 years.

(Signed) Susie E. Harper, Affiant.

Subscribed and sworn to before me this 18th day of October, 1934. (Signed) Byron E. Taylor, Notary Public. My commission expires Dec. 7, 1937. (Seal.)

I, C. H. Cochran, after being duly sworn, depose and say that the foregoing affidavits are true and copies of the affidavits that the State Officials have impounded and extracted from my petition. That was filed in the State Supreme Court of Kansas at Topeka, Kansas.

C. H. Cochran, Affiant.

[fol. 91] (Copy)

Spring Term of Court: 2nd Tuesday in May.
Fall Term: 1st Tuesday in December.
District Judge-: Hon. Graham M. Torrance, Bemidji, Minn.; Hon. Alfred L. Thwing, Grand Rapids, Minn.; Hon. D. Harry Fullerton, Brainerd, Minn.

Office of Clerk of District Court, Fifteenth Judicial District

Paul Huff, Clerk,

Aitkin, Minnesota

May 23, 1941.

Mr. C. H. Cochran, Box 2, Lansing, Kansas.

Dear Sir:

We are in receipt of your letter of May 21.

I have looked this record up, and find that Charles H. Smith, also known as Charles H. Cochran, was sent to the State Prison at Stillwater, Minnesota on or about the

8th day of October, 1917, for Burglary in the 3rd degree. In the direct testimony before the Court, he gave his birthdate as December 12, 1895. This was on or about October 8, 1917. This would make him about 21 or 22 years old at that time. The Judge asked him further if that was correct, and he said it was correct. By this testimony before the Judge of District Court, he was not under 16 years of age when he was sent to the State Prison.

I hope this clears up the matter for you, and any further information requested will be immediately answered.

Yours truly, (Signed) Paul Huff, Clerk of District Court.

[fol. 92] (Copy)

Office of O. M. Wheat, County Attorney,

Barber County, Medicine Lodge, Kansas

June 23, 1941.

Mr. Charles H. Cochran, Box 2, Lansing, Kansas.

DEAR SIR:

We have your letter of June 17 making inquiry as to whether this office has a warrant or information against you.

We have not checked any back records, but so far as my personal knowledge goes, there is nothing in the office against you.

We have checked with the office of Clerk of the District Court and with the Sheriff and neither office appears to have anything against you.

It would be possible that something was issued a number of years ago out of the Justice of Peace Court in this county, and if so, we have no present knowledge of the matter.

We have checked the warrant record on the County Attorney Fee Book back to January 12, 1931, and nothing appears against you.

I am,

Very truly yours, (Signed) O. M. Wheat.

OMW:HT.

In Re: Introduction statement of Sumner County Attorney John C. Potusie to Kirk Prather, Warden K. S. P.

[fol. 93] Oxford, Kansas,
May 21, 1941.

Mr. C. H. Cochran:

As to your questions I do not remember as to the jury mixing with the witnesses there was nothing to hinder and I don't think crime deserves the punishment.

(Signed) Burt Devore, Oxford, Kansas.

This letter is from one of the jurors of case, the State vs. Cochran, on the 15th day of May, 1933.

(Copy)

[fol. 94]

Court Officers: Clark A. Wallace, Judge; Max D. Hall, County Attorney; Jay B. Pearl, Clerk.

Court Meets: Second Monday in January. Second Monday in April. Second Monday in June. Second Monday in October.

Howard Carrithers, Sheriff of Harper County

Hugh Willet, Undersheriff

Office Phone 387; Residence 166
Anthony, Kansas

May 19th, 1941.

Mr. C. H. Cochran, Lansing, Kansas.

Dear Sir:

In answer to your letter of the 14th, will say that you were arrested Jan. 9th, 1933 for forgery, and was discharged 4-14-33 by Judge May, and as far as we know that is all there has been recorded here.

(Signed) Howard Carrithers, Sheriff. (Signed by) Hugh Willett, Undersheriff.

In Re:

Introduction statement of Sumner County Attorney John C. Potusie to Kirk Prather, Warden, K. S. P.

[fol. 95] IN SUPREME COURT OF KANSAS

No. 35,156

In Re: C. H. COCHRAN for a Writ of Habeas Corpus, Appellant,

v.

M. F. AMRINE, Warden of the Kansas State Penitentiary, Appellee

ORDER DENYING MOTION FOR REHEARING, ETC.—July 3, 1941

Now comes on for consideration the motion of the appellant for a rehearing; a motion to subpoena witnesses and a motion for an order staying the execution of the judgment of this court herein, and thereupon, after due consideration by the court; it is ordered that each of said motions be denied.

By the Court.

[fol. 96] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 97] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the Supreme Court of the State of Kansas is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

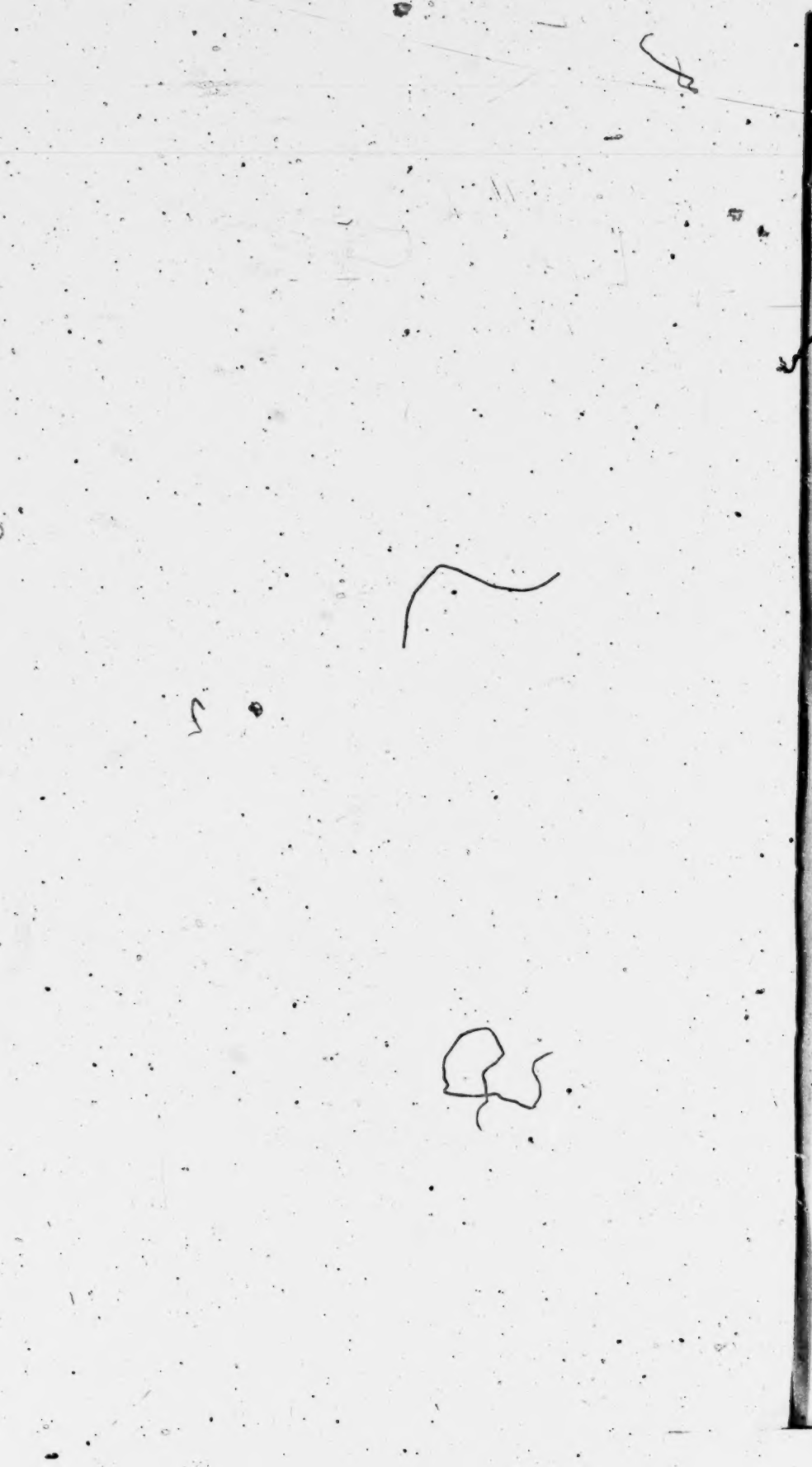
[fol. 98] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—October 13, 1941

On Consideration of the motion for leave to proceed further herein in forma pauperis,

It Is Ordered by this Court that the said motion be, and the same is hereby granted.

Endorsed on Cover: In forma pauperis. Enter C. H. Cochran, pro se. File No. 45838. Kansas, Supreme Court. Term No. 510. C. H. Cochran, Petitioner, vs. The State of Kansas and Milton F. Amrine, Warden, Kansas State Penitentiary. Petition for a writ of certiorari and exhibit thereto. Filed August 13, 1941. Term No. 510, O. T. 1941.



FILE COPY

AUG 13

CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 510

C. H. COCHRAN,

Petitioner,

vs.

THE STATE OF KANSAS, AND MILTON F. AMRINE, WARDEN KANSAS STATE PENITENTIARY.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS AND BRIEF IN SUPPORT THEREOF.

C. H. COCHRAN,
Pro Se.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 510

C. H. COCHRAN,

vs. *Petitioner,*

THE STATE OF KANSAS, AND MILTON F. AMRINE,
WARDEN KANSAS STATE PENITENTIARY.

APPLICATION FOR WRIT.

Comes now your petitioner of the above entitled cause, to the Supreme Court of the United States of America, Who respectfully contends that he is being unlawfully restrained, held to involuntary Servitude by Milton F. Amrine, Warden of the Kansas State penitentiary, and that the Cause or pretense of Cause is a Mittimus or Commitment issued by the District Court of Sumner County, Kansas, and the petitioner respectfully contends that the District Court of Sumner County, Kansas Violated every cardinal Principle in its trial of the petitioner and that the respondent Milton F. Amrine, and Predecessors, Wardens of the Kansas State Penitentiary, Denied unlawfully by illegally intercepting "Impounding" and Seizure of the petitioners Appeal Documents and therefore denying Petitioner his timely Appeal from the errors of the trial Court.

1y

Wherefore: the petitioner filed an application for Writ of Habeas Corpus into the Supreme Court of Kansas, to which your petitioner complains that the Supreme Court of Kansas refused to properly hear the petition or Writ and never permitted the pertinant evidence or testimony to be entered into the record for any reviewal and his lawful right, and the Opinion of the Supreme Court of Kansas is Null, Void and without Lawful force for the following reasons; to-Wit:

I.

The records will show where the petitioner properly moved the Kansas Supreme Court for Appearance to Submit his evidence to the Court after the procedure held to be the only admissible procedure in Habeas Corpus, Which denied and ordered petitioner to Submit on abstract and brief.

II.

The records will show that the petitioner was unlawfully denied a hearing of his petition, and the right to introduce his testimony and witnesses to Support his petition was denied.

III.

The records will show that evidence, pleading and filings material to support the petition was Stolen and "Impounded" by the Respondent, and never reached the court, and that the Supreme Court of Kansas was duly notified of such unlawful Seizure of filings and was moved to Cite Respondent for contempt.

IV.

The petitioner respectfully contends that his right to a lawful hearing on the Writ, the right to Submit his evidence, the right to judicial inquiry, Witnesses and examine all records, evidence pleadings of Respondent was Denied.

Therefore: your petitioner respectfully moves and prays the Honorable Supreme Court of the United States, to let issue upon the Supreme Court of Kansas the prerogative Writ of Certiorari, that the Supreme Court of the United States may examine the said errors of the Kansas Supreme Court, and order the said Kansas Supreme Court to allow the petitioner his lawful Liberty.

Respectfully submitted,

C. H. COCHRAN,
Petitioner, Pro Se:
Forma Pauperis.

PETITIONER'S BRIEF.

The petitioner was convicted of 2nd degree Forgery by the District Court of Sumner County, Kansas, and was sentenced to a life term in the Kansas State Penitentiary.

The petitioner filed an application for Writ of Habeas Corpus in the State Supreme Court of Kansas Alleging that the trial Court denied the petifioner due process of Law, That the Arguement for a new trial was argued during his absence, that he was subsequently denied his timely appeal by the officers and agents of the State of Kansas and the State Penitentiary by unlawful Seizure, Confiscation and impounding of said appeal documents, On or about January 3rd, 1941, the petitioner Appealed the petition from the Current Jurisdiction, without any kind of a hearing, into the Supreme Court of Kansas. The court declined to review the application and returned the application to your petitioner 3 Seperate times. The Honorable District Court of the United States instructed the Supreme Court of Kansas to hear the Writ.

The case was docketed for April 10th, 1941, and thereupon passed by the court until May 5th, 1941.

During the date of filing until the Supreme Court rendered its opinion, the respondent deliberately confiscated, seized, and impounded most of *materiál* evidence and pleadings addressed to the court, after stripping petitioner of its affidavits. After being informed of the unlawful seizure the petitioner notified the court of such acts of the respondent and moved that order be issued to call evidence into the court. The petitioner sent to the court a witness and the courts said, "They washed their hands of the whole mess."

The petitioner then moved for his appearance before the court and made application by another writ of habeas corpus, making the Chief Justice of the Supreme Court the respondent, for his appearanee, all of the petitioners

efforts to bring evidence, witnesses and records before the court was denied.

The court ordered the petitioner to submit his case by brief and abstract, which was included copies of 7 affidavits, upon inquiry these affidavits never reached the court clerk after going thro the censorship of the respondent. Wherefore he had used his authority as warden of the Kansas State Penitentiary, and did remove all pertinant evidence.

The Supreme Court of Kansas did upon such information and knowledge denied the petitioner the right of his lawful defense and witnesses in support of his petition and denied the writ.

In *Walker* v. *Johnson*, 61 Sup. Ct. Repr. 574, the court said:

> If an issue of fact is presented, the practice appears to have been to issue the writ, have the petitioner produced, and hold a hearing at which evidence is received.
>
> This we think, the only admissible procedure, nothing else will satisfy the command of the Statute, that the judge shall proceed "To determine the facts of the case, by hearing the testimony and arguement." "A prisoner in custody may have judicial inquiry into the very truth and substance of the causes of his detention." "Such a judicial inquiry involves the reception of testimony as the language of the Statute Shows."
>
> Cited *Supra.*
>
> *Johnson* v. *Zerbst*, 304 U. S. 458, 466;
>
> *Smith* v. *O'Grady*, 312 U. S. 329.

The petitioner alleges that he moved the court to hear the writ that the witnesses could give material testimony in support of the writ.

In *Walker* v. *Johnson*, 61 Sup. Ct. Rep. 574. Paragraph 5-6.

The Court Concluded:

(5) Petitioner for the writ of habeas corpus has on a hearing the burden of sustaining his allegations by preponderance of evidence.

(6) Denials in affidavits filed with the return to the rule to show cause why a Writ of Habeas corpus should not issue, of allegations in the petition, only serve to make the issues, which must be involved by the evidence taken in the usual ways and can have no other office: And the affidavits must be subjected to examination *ore tenus* or by deposition.

Mooney v. *Holohan Supr.*, 294 U. S. 103, 113.

The petitioner respectfully contends that in his motion for appearance he assured the court that it was necessary to appear to introduce his evidence and witnesses to prove the allegations set forth therein.

Seized Evidence.

The petitioner respectfully contends and can definitely show by pertinant evidence and witnesses, that affidavits, motions and pleadings were illegally confiscated by the respondent, in that said evidence was by order submitted to him for rigid censorship. Thereupon, were removed from the mail, and stripped from the petition.

Right of Appeal From Trial Court.

The petitioner contends that it was his constitutional right to appeal from the judgment and procedure used by the State in bringing about his conviction, and that the acts of the agents and officers of the State, in denying the appeal, was unlawful and unconstitutional. The petitioner sought to prove that during his incarceration in the Kansas State Penitentiary, he has been consistantly denied his timely appeal and proper redress in the Court. The petitioner respectfully contends that the Kansas State Supreme

Court denied this evidence to be introduced into the records. The petitioner further contends and can show by record that the Attorney General of Kansas, the Supreme Court of Kansas and the Wardens of the penitentiary has consistantly denied the petitioner all redress by timely actions in the Courts of Kansas.

Appeal from Court of Current Jurisdiction.

The petition at bar was filed in the District Court of Leavenworth County, Kansas, was denied without any hearing What-so-ever. The petitioner duly gave notice of his appeal to the Supreme Court of Kansas, after three attempts to get his petition into the court, the court filed on the 2nd day of January 1941, and the clerk notified the petitioner that his appeal documents had been filed by the clerk of the District Court of Leavenworth County, Kansas.

The opinion issued by the Supreme Court of Kansas on the 7th day of June 1941, shows that said appeal was not before the court, and was therefore denied. Court records will show that such records on appeal was mishandled by the District Court of Leavenworth County. Kansas, in its preparation of said appeal papers.

Kansas Supreme Court as Party to Action in Denial.

The petitioner respectfully contends that from 1933 to the present time, the officers of the Supreme Court of Kansas has by such actions in its denial of the petitioners constitutional rights and the right to be heard on the petition of Writ of Habeas Corpus and the petitioners allegations therein, which duly accuses the court and other officers and agents of the State, Barring the petitioner from his rights.

12 R. C. L. 1180, 1236: 2 R. C. L. Supp. 1569.

The Writ of Habeas Corpus is a Writ of right, and is sometimes issued upon very informed applications.

> Motion to Quash the writ does not lie because of mere formal defects in the petition upon which it was issued; the inquiry in such cases bring not the technical formality of the showing made to the court for the issuance of the Writ, but as to the legality of the alleged detention of the prisoner.

The petitioner contends that he has never been able to present his evidence and witnesses to the court upon the allegations set forth in the application.

Evidence and Witnesses.

The petitioner respectfully contends that his evidence was unlawfully confiscated, seized and impounded by the respondent and other officers and agents of the State, and that the court upon short notice, denied the petitioner the right to appear and produce material witnesses to prove his petition.

But the petitioner contends that he ordered his witnesses into the court for the purpose of the hearing which was denied.

Judgment of Trial Court.

The petitioner respectfully contends that the judgment of the District Court was violative of the statutory provisions and that the trial court went beyond its jurisdiction in its adjudication.

The petitioner made every effort to being before both trial Court and the Supreme Court, that the trial court prevented the defendant from showing that the findings of previous incarceration by the trial court was violative, of statutory provisions, and that the previous commitment was unconstitutional, in that the defendants Mother and not defendant entered the plea of guilty, and put the defendant at the mercy of the court. The validity of the court, the validity of the previous commitment and not conviction, was and is void and unconstitutional.

The pertinent facts of the petitioners petition has been treated with disregard and is and has been a travesty of justice.

In Kansas Bill of Rights #20. Legislative Power not given to court.

And in:

Kansas Bill of Rights; Duty of the Courts to enforce rigid observance of Statute.

State v. *Snyder* 30 K. 758, 761, P. 523.

The petitioner respectfully contends that the trial court went beyond the statutory provision and grossly errored, all of which the Supreme Court of Kansas has passed without a lawful hearing and arbitrarily rendered its opinion without any kind of a hearing, and therefore denied pertinent evidence to be introduced in petitioner's behalf.

All of which is respectfully submitted.

C. H. COCHRAN,
Petitioner Pro Se:

Statement.

Comes now; the petitioner of the above entitled cause and respectfully contends that the records will reveal that the petitioner never has before, other than the case at bar, filed any proceeding in the District Court of Leavenworth County, never filed but (1) petition prior the case at bar, which was #32,802 *Cochran* v. *Simpson*, #143 K. 273, having no material bearing upon the case at bar. Petitioner was denied in fact an orderly procedure was denied and never was defended.

The former case filed in the United States District Court, No. 421-H-C was a direct challenge of the Habitual Criminal Statute, and not the errors of the trial court, the last case No. 651-H.-C. was withdrawn before a hearing to exhaust the State rights, and was the same petition #35.156

of the Supreme Court of Kansas and the same petition now at bar.

The petitioner contends that he has never brought the contents of the present petition before the Supreme Court or the United States District Court at any previous date, in fact never has any petition filed in the Supreme Court of Kansas given a lawful hearing or was the petitioner admitted before the court for judicial inquiry and to introduce evidence and witnesses, and that each petition was denied without so much as a hearing of any kind whatsoever.

The petitioner contends that each effort to introduce his evidence and motion for appearance was passed and denied and the Supreme Court set up its arbitrary Opinion, denying the petitioner his lawful defense. The petitioner contends that the petition #35,156 was refiled in the United States District Court on June 12th 1941 and was dismissed by motion, by the Honorable Richard J. Hopkins, without proof of any such filings and that at such time the motion was acted upon, there was no filings or pleadings showing certiorari proceeding being instituted and that same motion was made by misrepresentation of the State Attorney General.

Therefore the petition was denied and was never filed.

The petitioner further contends that he has only filed two petitions, and at no time was represented by counsel or self, and that the opinion of the court was contrary to the very principle of universal justice, by denying any and all defense to the petition, pertinent evidence and witnesses to support petition. The petitioner challenges the statement made by the Supreme Court of Kansas opinion as to the efforts previously made the petitioner, although the petitioner does show where the State of Kansas has unlawfully denied the petitioner his constitutional rights to exercise his appeal from the trial court. The petitioner did

show by record that such efforts were blocked and barred by the State, and the records were seized and impounded before they had reached the court and the petitioner duly notified the court of the seizure.

If the attached affidavits were not sufficient record to describe his efforts, then has the respondent duly shown where the petitioner had a trial.

The petitioner duly shows by record that the respondent and the State of Kansas, has taken unlawful advantage of the petitioner by such actions in which the evidence was seized.

Respectfully submitted,

C. H. COCHRAN,
Pro Se.

UNITED STATES SUPREME COURT

STATEMENT TO COURT:

The petitioner alleges that the purported conviction in the State of Minnesota is untrue and that at such time the petitioner was less than 16 years of age.

The petitioner alleges further that his mother entered the plea in the Tulsa District Court and that the court refused to appoint counsel, and that the petitioner was a Minor and did not enter the plea that committed him to the Oklahoma State Reformatory.

The petitioner alleges that this commitment was due to lack of finances to employ counsel, all of which petitioner is now able to show that he never committed the offense of Larceny of Automobile and that said Automobile was recovered in possession of another man, who pleaded guilty after the petitioner's commitment in 1920.

The petitioner alleges that he was not found guilty of any crime other than the conviction in 1928, from Sumner County, Kansas and 1933 from the same County, the only two *lawful* convictions and that the alleged convictions was

not *lawful,* but null and void for various reasons, the Supreme Court and respondent refused, denied and prohibited petitioner to introduce this evidence to support the petition for Habeas corpus.

For the correct age of your petitioner, See files in National Archives Washington D. C. Under William B. Cochran. Vet. Civil War. Division of pension.

Respectfully submitted,

C. H. Cochran.

AFFIDAVIT

STATE OF KANSAS,
County of Leavenworth, ss:

I, C. H. Cochran, being of lawful age and after being duly sworn, swears that the following statement is true:

On, or about, June 15, 1933, an appeal to the State Supreme Court had been prepared for filing into that court, on the process as was employed to convict the person C. H. Cochran, the Warden, Lacey M. Simpson and the Deputy Warden, A. J. Graham, confiscated the appeal papers.

On, or about, October 10th., 1934, another appeal was prepared to be filed in the case and under the orders of Mr. A. S. Foulks, Parole and Pardon Attorney and the Warden, Mr. Lacey M. Simpson, the Notary Public, R. D. Payne, refused to certify said papers to be filed in the appeal. After the time allowed by the State for timely appeals had been exhausted, I prepared a petition or application for a Writ of Habeas Corpus. This, too, was denied permission to file and again the Notary Public refused to certify by the order of the Board of Administration, Warden and Pardon Attorney.

Time after time, petitions were confiscated and the petitioner was reprimanded for trying to file same in the State Supreme Court.

On, or about, February 15th., 1937, a petition prescribed by statute of the State of Kansas, (Writ of Error) was prepared and was by the Parole and Pardon Attorney, returned and denied permission to file. Later a petition

to the United States District Court is ordered destroyed, but was later filed without being certified by a Welfare Worker. While this petition was pending, hearing correspondence was severed between the petitioner and the Court.

The affiant swears that every course of redress was closed to him and blocked in his efforts to properly file his petitions in his behalf in the Courts of the State and the United States.

Your affiant saith not further.

(Signed) C. H. COCHRAN,
Affiant.

AFFIDAVIT.

I, Emma E. Cochran, being duly sworn states, on June 9th, 1933, Kansas Prison Officials seized from me, C. H. Cochrans Appeal papers, refused to let me file them for him in the Supreme Court.

EMMA E. COCHRAN,
Affiant.

Subscribed and sworn to before me this 11th day of October, 1934.

BYRON E. TAYLOR,
[SEAL.] *Notary Public.*

My commission expires Dec. 7th 1937.

AFFIDAVIT.

STATE OF KANSAS,
County of Wyandotte, ss:

I, Emma L. Hinton being of lawful age and duly sworn deposes and states that on or about June 1st, 1934, C. H. Cochran an inmate of the Kansas State prison by written consent gave me power of Attorney to act in his behalf in the Supreme Court of Kansas to file and execute all transactions in that court. On June 15th, Mr: E. M. Stubblefield Deputy Warden Called me into his office and forbade me to take out any more papers belonging to C. H. Cochran.

I therefore could do nothing further. After Mr. Kirk Prather came in as Warden I was allowed to take the papers for keeping and they still remain in my hands.

(Signed) EMMA L. HINTON,
Affiant.

Subscribed and sworn to before me this 28th day of August, A. D. 1941.

(Signed) EL FREDA MCCULLOUGH,
[SEAL.] *Notary Public.*

My commission expires Sept. 4, 1940.

AFFIDAVIT.

STATE OF KANSAS,
County of Leavenworth, ss:

I, Charly Scudder, being duly sworn, make the following statement that I did on or about the 16th, day of October 1933, did issue worthless check to the Odorless Dry Cleaners, drawn on the First National Bank of Harper, Kansas paid to order of the Ordless dry cleaners of that City, the amount of $12.60, and endorsed by me as A. J. Messenger, pay to the driver of the Ordless Dry Cleaners truck, Paying account of $6.50, and receiving remainder in Cash.

I did willfully and intentionally defrauded the firm and absconded before payment of check.

Affiant farther swears not.

C. SCUDDER,
Affiant.

Sworn to and subscribed before me, this 1, day of March, 1935.

R. D. PAYNE,
[SEAL.] *Notary Public.*

My commission expires Apr. 18, A. D. 1937.

AFFIDAVIT.

STATE OF KANSAS,
County of Leavenworth, ss:

I, Frank Boaz, being of lawful age, after being duly sworn disposes and aver's that on or about the 14th day of June,

1933 C. H. Cochran ask me to offer correction to errors, if any, in his appeal documents.

After he had finished reading the papers he state that he was going to file them and went to the Deputies office. Upon his return he informed me that his papers had been confiscated by the Deputy Warden.

About a year later C. H. Cochran complained again, that he had been restrained from filing his appeal papers.

The affiant swears no further.

FRANK BOAZ,
Affiant.

Subscribed and sworn to before me this 9th day of Sept. A. D. 1940.

R. D. PAYNE,
[SEAL.] *Notary Public.*

My Commission expires April 18, 1941.

AFFIDAVIT.

STATE OF MISSOURI,
County of Lawrance, ss:

I, Susie E. Harper, being duly sworn deposes and state that on the 9th day of June 1933, I visited C. H. Cochran at the Kansas Prison, and aafter he had turned over his appeal documents to a lady there, I knew to be his mother, I saw the Deputy Warden come from the office and demand the papers, refused to return them and ordered the aged lady from the prison and I heard him tell C. H. Cochran that he could not now nor ever file his papers. then told an officer to punish him. I have not visited him since as the treatment of visitors did not appeal CIVIL. I have known C. H. Cochran for 30 years.

(Signed) SUSIE E. HARPER,
Affiant.

Subscribed and sworn to before me this 18th day of October, 1934.

(Signed) BYRON E. TAYLOR,
[SEAL.] *Notary Public.*

My commission expires Dec. 7th 1937.

3y

I, C. H. Cochran after being duly sworn deposes and says that the foregoing affidavits are true and copies of the affidavits that the State Officials have impounded and extracted from my petition. That was filed in the State Supreme Court, of Kansas At Topeka, Kansas.

C. H. COCHRAN,
Affiant.

No Counsel

STATE OF OKLAHOMA,
Tulsa County, ss:

IN THE DISTRICT COURT OF THE 21ST JUDICIAL DISTRICT OF THE STATE OF OKLAHOMA, SITTING IN AND FOR TULSA COUNTY.

JUDGMENT AND SENTENCE ON CONVICTION.

THE STATE OF OKLAHOMA, *Plaintiff;*

vs.

C. H. COCHRAN, *Defendant.*

JUDGMENT AND SENTENCE ON PLEA OF GUILTY FOR STEALING AN AUTOMOBILE

The prisoner, C. H. Cochran being personally present in open court and having been legally informed against and arraigned and having plead guilty of the crime of stealing an automobile charged in said information and upon being asked by the Court whether he had any legal cause to hsow why judgment and sentence should not be pronounced against him at this time and having no good reason why it shouldno be pronounced against him, and none apperaing to the Court does now hereby adjudge and sentence the said C. H. Cochran to be imprisoned in the state penitentiary at hard labor for the period of (5) five years for the said offense.

It Is Therefore Hereby Considered, and Adjudged by the Court that the said C. H. Cochran be committed to be imprisoned in the State reformatory at Granite in the state

of Oklahoma and confined in said reformatory for the term of five (5) years for said offense of stealing an automobile said term of sentence (continued:) to begin at and from the date of his delivery to the warden of said reformatoy and that said defendant pay the costs of this prosecution, taxed at $——— for which judgment is herevy rendered against the said defendant and thereupon the court notified the defendant of his right to appeal.

It Is Further Ordered and Adjudged by the court that the Sheriff of Tulsa County, State of Oklahoma transport said C. H. Cochran to the said Reformatory at Granite in the State of Oklahoma and the warden of said reformatory do detain the said C. H. Cochran according to this judgment sentence and order, and that the Clerk of this Court do immediately Certify, under the seal of the Court and deliver to the sheriff of Tulsa County, State of Oklahoma, a copy of this judgment sentence and order to accompany the body of the said C. H. Cochran to the said reformatory at Granite in the State of Okalhoma and to be left therewith at the said reformatory and the said copy to be the Warrant and authority of the said Sheriff of Tulsa County, State of Oklahoma, for transportation and imprisonment of the Said C. H. Cochran as hereinbefore provided.

Doe in open Court December 16. 1920.

REDMOND S. COLE,
Judge.

STATE OF OKLAHOMA,
Tulsa County.

IN THE DISTRICT COURT OF SAID COUNTY

I, Hohn D. Porter, Clerk of the District Court in and for said County and State do certify the foregoing to be a true and correct copy of the judgment and sentence in the case of the State of Oklahoma vs. C. H. Cochran No. 2074 as the same appears from the file and record in my office. Witness my hand and the seal of said court this 16th day of December, 1920.

JOHN D. PORTER,
Clerk.
By LUCILE LINTO,
Deput.

No. 2074

STATE OF OKLAHOMA, *Plaintiff*

vs.

C. H. COCHRAN, *Defendant*

Now this cause coming on to be heard: Plead guilty sentenced to State Reformatory at Granite, Oklahoma: five (5) years for stealin an automobile.

Received of James Woolley, Sheriff of Tulsa County, State of Oklahoma the following prisoner: C. H. Cochran, Stealing an Automobile.

GEO. A. WATERS,
Warden.
BY CHAS. CAMPBELL,
Deputy.

Recorded in Book 15 Page 676.

I, Cal Crum, County Clerk for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in the Court Clerk's Office of Tulsa County, Oklahoma, this 14th day of Dec. 1940.

BY A. BRODIS,
Deputy.
CAL CRUM,
Clerk.

I, C. H. Cochran being of lawful age do swear on oath that the above is a true copy of the original.

C. H. COCHRAN.

Subscribed and sworn to before me this — day of —— A. D. 1940.

——,
Notary Public.

My commission expires —— A. D. 194 .

APPEARANCE DOCKET—CRIMINAL

No. 2174

Title of Cause: State of Oklahoma vs. C. H. Cochran.
Offense Charged: Stealing an Automobile.
Attorneys: —— —— County Attorney.

1920

Clerk's Cost Plaintiff:
Sheriff's Cost:
Miscellaneous:
Disbursements:
Credits;

Dec. 7 Filing Transcript
" " " Information
" " Defendant duly arraigned, pleaded not guilty
" 16 Defendant pleaded guilty, sentenced to Reformatory at Granite, Okla. for five years.
" 16 Commitment issued

"AFFIDAVIT."

STATE OF KANSAS,
County of Leavenworth, ss:

I, C. H. Cochran being of lawful age after being sworn disposes and says that the foregoing is a true and complete copy of the original.

C. H. COCHRAN,
Affiant.

Subscribed and sworn to before me this — day of —— A. D. 194 .

——,
Notary Public.

My Commission expires as notary public on the — day of —— A. D. 194 .

No Counsel.

Records will show that the petitioner was discharged Sept. 17, 1923 from the Oklahoma State reformatory and did not escape, according to records of County Attorney Page 63.

"AFFIDAVIT."

COUNTY OF LAWRENCE,
State of Missouri, ss:

I, Emma E. Cochran of lawful age being first duly sworn on oath disposes and says:

That I am the Mother of Chas. H. Cochran who was born on Dec. 12, 1901, in the City of Vernon, County of Lawrence, State of Missouri.

And that he did in the year of 1916, Suffered a severe case of Typhoid Fever which affected him to the extent that he was not sound of mind and was not responsible for his acts during the years 1916 to 1924. And the I did on or about the 1st Day of Dec. 1920, did influence him to enter a plea of Guilty in the Tulsa District Court at Tulsa, Okla. And that he did not know of results of such plea, and that he was not responsible for such irregularities on my part which resulted in his confinement in the State Reformatory at Granite, Okla.

The affiant sweats not further.

(Signed) EMMA E. COCHRAN,
Affiant.

Subscribed and swon before me this day 29 day of May A. D. 1935. Notary public in ad for the county of Lawrence and State of Missouri.

BRYON E. TAYLOR. (SEAL.)

My commission expires.
Dec. 7th, A. D. 1937.

"AFFIDAVIT."

STATE OF KANSAS,
County of Leavenworth, ss:

I, C. H. Cochran being of lawful age do upon oath swear that the foregoing affidavit is a true and complete copy of the original.

C. H. COCHRAN,
Affiant.

Subscribed and sworn to before me this — Day of — A. D. 194—.

——,
Notary Public.

My Commission expires as notary public on the — day of — A. D. 194—.

Re: Statement of County attorney, Page 63.

"AFFIDAVIT."

COUNTY OF DADE,
State of Missouri, ss:

I, W. L. Ferguson being of lawful age, first being duly sworn disposes and says:

That I have known Charles H. Cochran for the past 25 Years, and that he was on or about November 1916, afflicted with Typhoid fever of which to my knowledge was very severe and lasting several weeks and was a violent and lalignant case.

And further the affiant swears not.

(Signed) W. L. FERGUSON,
Affidavit,
President Farmers State Bank,
[SEAL.] *South Greenfield, Mo.*

Subscribed and sworn before me this day 6th of April A. D. 1935.

WALTER J. COX,
Notary Public in and for the County of Dade and State of Mo.

My commission expires Dec. 16th, 1938.

"AFFIDAVIT."

COUNTY OF DADE,
State of Missouri, ss:

I, H. H. Fuqua, being of lawful age, after being duly sworn disposes and says: That I have known Charles H. Cochran for the past 25 Years and that he did on or about 1916, suffer a very severe Ailment, of which Dr. L. S. Couplin (Deceased) pronounced Typhoid Fever and that he was in a very Serious condition during the long period of illness.

The deponent swears not further.

(Signed) J. H. FUQUA,
Affiant,
Merchant and Hardware Dealer,
South Greenfield, Mo.

Subscribed and sworn before me this day 6th of April A. D. 1935.

WALTER J. COX,
Notary Public in and for the
County of Dade and State of Mo. (SEAL.)

My commission expires Dec. 16, 1938.

STATE OF KANSAS,
County of Leavenworth, ss:

I, C. H. Cochran being of lawful age do upon oath swear that the foregoing affidavits are true and complete copy of the original.

C. H. COCHRAN,
Affiant.

Subscribed and sworn to before me this — day of —— A. D. 194—.

——— ———,
Notary Public.

My commission expires —— A. D. 194—.

Subscribed and sworn before me this 9 day of Sept., 1940 A. D.

My commission expires April 18, 1941 A. D.

R. D. PAYNE,
Notary Public.

Spring Term of Court: "2nd" Tuesday in May.
Fall Term: 1st Tuesday in December.

District Judge
Hon. Graham M. Torrance,
Bemidji, Minn.
Hon. Alfred L. Thwing,
Grand Rapids, Minn.
Hon. D. Harry Fullerton,
Brainerd, Minn.

OFFICE OF CLERK OF DISTRICT COURT, FIFTEENTH JUDICIAL DISTRICT

Paul Huff, Clerk,
Aitkin, Minnesota.

May 23, 1941.

Mr. C. H. Cochran,
Box 2, Lansing, Kansas.

DEAR SIR:

We are in receipt of your letter of May 21.

I have looked this record up, and find that Charles H. Smith also known as Charles H. Cochran was sent to the State Prison at Stillwater, Minnesota on or about the 8th day of October, 1917, for Burglary in the 3rd degree.

In the direct Testimony before the Court, he gave his birthdate as Dec. 12, 1895. This was on or about October 8, 1917. This would make him about 21 or 22 years old at that time. The Judge asked him further if that was correct, and he said it was correct. By this testimony before the Judge of District Court, he was not under 16 years of age when he was sent to the State Prison.

I hope this clears up the matter for you, and any further information requested will be immediately answered.

Yours truly,

(Signed) PAUL HUFF,
Clerk of District Court.

C.

Copy

Note date of Birth, 15 yrs. in 1917. Petitioner denies this conviction, and was not shown only to prejudice the Supreme Court.

Page 63, transcript.

OFFICE OF O. M. WHEAT,
County Attorney, Barber County,
Medicine Lodge, Kansas.

June 23, 1941.

Mr. Charles H. Cochran,
Box 2,
Lansing, Kansas.

DEAR DIE:

We have your letter of June 17th making inquiry as to whether this office has a warrant or information against you.

We have not checked any back records but so far as my personal knowledge goes there is nothing in the office against you.

We have checked with the office of Clerk of the District Court and with the Sheriff and neither office appears to have anything against you.

It would be possible that something was issued a number of years ago out of the Justice of Peace Court in this county, and, if so, we have no present knowledge of the matter.

We have checked the warrant record on the County Attorney Fee Book back to January 12, 1931, and nothing appears against you.

I am,
Very truly yours,

(Signed) O. M. WHEAT.

OMW/HW.

(Copy)

In re: Introduction statement of Sumner County Attorney John C. Potusie to Kirk Prather, Warden, K. S. P. Page 63. Clerk's transcript.

Court Officers: Clark A. Wallace, Judge. Max D. Hall, County Attorney. Jay B. Pearl, Clerk.

Court Meets Second Monday in January, Second Monday in April, Third Monday in June, Second Monday in October.

HOWARD CARRITHERS,
Sheriff of Harper County,
Hugh Willett, Undersheriff,
Office Phone 387; Residence 166.
Anthony, Kansas.

May 19th, 1941.

Mr. C. H. Cochran,
Lansing, Kansas.

DEAR SIR:

In answer to your letter of the 14th, will say that you were arrested Jan. 9, 1933 for forgery, and was discharged 4-14-33 by Judge Hay, and as far as we know that is all there has been recorded here.

(Signed) HOWARD CARRITHERS, Sheriff.
(Signed by) HUGH WILLETT, Undersheriff.

(Copy)

In re: Introduction statement of Sumner County Attorney John C. Potusie to Kirk Prather, Warden, K. S. P. Page 63. Clerk's transcript.

Oxford, Kansas,
May 21, 1941.

Mr. C. H. Cochran,

As to your questions I do not remember as to the jury mixing with the witnesses there was nothing to hinder and I don't think crime deserves the punishment.

(Signed) BURT DEVORE,
Oxford, Kansas.

This letter is from one of Juror of Case, the State vs. Cochran, on the 15th day of May, 1933.

(Copy)

BULLETIN.

June 25, 1941.

ALL CELL HOUSES:

Chief Justice Dawson has written the Board of Administration and, in turn, the board has written me an instruction in regard to notarizing and certifying habeas corpus proceedings, when they have not been properly prepared.

THE INSTRUCTIONS SAYS:

"Many of the cases coming before the court are infounded and should never have been permitted to reach the courts evidently some inmates are acting as attorneys on these cases within the institution and certainly such practice should not be permitted. It is our understanding that we have had a general agreement that when any convict believes he has a legitimate case of habeas corpus proceedings he should have it developed and presented by some one who has legal knowledge to properly present the case, and at no time should cases be notarized until they have been properly prepared and presented."

This instruction to all officers and inmates that this instruction of the Board of Administration will be followed in this institution.

M. F. AMBINE,
Warden.

Lansing, Kansas,
June 30, 1941.

Honorable Walter A. Huxman,
Judge of U. S. Circuit Court of Appeals,
Topeka, Kansas.

DEAR SIR:

On June 12th, I filed in the U. S. District Court for a writ of Habeas Corpus, only after it had been denied by the Supreme Court of Kansas without any kind of a hearing. The letter to Judge Hopkins no doubt will show you what irregularities has taken place. The petitioner never gave

any notice of Certiorari proceeding. But ask for a certified copy of filings to determine just what the Respondent or state Officials had removed unlawfully from the petition in the line of evidence and affidavits. Judge Hopkins proceeded to dismiss cause upon fraudulent representations by the Respondent. On June 27th, I moved for a stay of judgment after the case was dismissed. I want this dismissal and the reason looked into and investigated. I am herein enclosing a copy of my letter to Judge Hopkins and a letter from Mr. E. E. Clark, Clerk of the Supreme Court. I cannot see no reason why this application should be dismissed without proof of such proceedings. This case #651-H-C, was filed in the U. S. Court last September, 1940. Withdrew to exhaust state rights. Judge Hopkins instructed me when I had exhausted State rights to come back into the court and he would extend every facility of the court. Upon the return to the court I was met with this kind of procedure. I have ask him to cite Mr. Parker for this fraudulent representation and I expect something to be did.

Very respectfully,

C. H. COCHRAN.

CC/
Judge Hopkins,
Jay S. Parker,
U. S. Supreme Court.

Lansing, Kansas,
June 30, 1941.

Honorable Richard J. Hopkins,
Judge, U. S. District Court,
Topeka, Kansas.

DEAR SIR:

This personal letter regarding the above cause which was dismissed because of purported proceedings in Certiorari.

The motion filed by the State Attorney General was prepostirous and very untrue, I have not gave (Until June 27th) gave any notice of such proceedings into the United States Supreme Court.

I ask Mr. Clark of the Supreme Court of Kansas for a copy of all filings to examine the records to see what was extracted by the State. Never at any time indicated such a move. I think politic thing to do is to cite this action against Mr. Jay S. Parker, as the very precepts and purposes was to prevent evidence and testimony from the records. I have a letter from Mr. Clark showing no such motion or notice of Certiorari and I can hardly understand why that court granted the motion without proof. If any evidence was introduced, it was a very usual trick to defect the issue in the absence of the petitioner. I intend to inform Judge Huxman of this action, and ask that something be did. I propose that you call this act to your consideration and bring the records to your court and see or find where I had instructed the Respondent or Mr. Clark of such proceedings prior June 27th, last. On this date I moved for a stay of Judgment and not before. I am forwarding along with the letter of Mr. Clark, the dismissal of your court to Judge Huxman, also a copy to the U. S. Court. I hardly know what to make of this, and to happen in a Federal institution, it no doubt would flabergast any jurist that such was passed without inquiry of that court. I filed the writ to be heard in the court and I wanted a lawful hearing, within the Constitutional perview, I still do, but I would rather ask that Citation be exercised for the action of Mr. Parker.

Very respectfully,

C. H. COCHRAN,
Box No. 2.

CC/
Jay S. Parker.
Honorable Judge Huxman.
U. S. Supreme Court, C. C. of Appeals.

Lansing, Kansas,
June 30, 1941.

Senior Justice,
United States Circuit Court of Appeals.
10th District,
Denver, Colorado.

Hon. Sir:

Attached hereto you will find letter addressed to parties concerned. Please exercise what ever steps may be necessary to correct this unusual error of parties.

Yours very respectfully,

C. H. Cochran.

CC/
J. S. Parker.
Richard J. Hopkins, Judge.
Walter A. Huxman.
U. S. S. Ct.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS FIRST DIVISION.

No. 651 H. C.

C. H. Cochran, *Petitioner*,

vs.

Milton F. Amrine, Warden of the Kansas State Penitentiary, *Respondent*.

Motion to Dismiss

Comes now the respondent, Milton F. Amrine, Warden of the Kansas State Penitentiary, and moves the Court to dismiss the writ of habeas corpus filed herein for the reason that said petitioner has applied to the Supreme Court of the United States for a writ of certiorari for review of the denial of an application for a writ of habeas corpus in the case of Cochran v. Amrine, 153 Kan. —, filed June 7, 1941.

Jay S. Parker,
Attorney General.
Jay Kyle,
Assistant Attorney General.
Attorneys for Respondent.

Filed June 18, 1941.

Howard F. McCue,
Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS FIRST DIVISION

No. 651 H. C.

C. H. COCHRAN, *Petitioner*,

vs.

MILTON F. AMRINE, Warden of the Kansas State Penitentiary, *Respondent*.

JOURNAL ENTRY.

Now on this 21st day of June, 1941, the above entitled cause came regularly on for hearing. The respondent appeared by his attorney, Jay Kyle, Assistant Attorney General of the State of Kansas.

Whereupon, upon presentation to the Court of the motion to dismiss for the reason that the petitioner herein had applied for a writ of certiorari for review of the denial of an application for a writ of habeas corpus in the case of Cochran v. Amrine, 153 Kan. —, filed June 7, 1941, and upon proof offered, the Court finds that the application of the petitioner should be dismissed.

It is Therefore Considered, Ordered and Adjudged that the motion of the respondent to dismiss the application for a writ of habeas corpus be and the same hereby is sustained and the application for a writ of habeas corpus of the petitioner is dismissed.

RICHARD J. HOPKINS,
Judge.

Approved:
JAY S. PARKER,
JAY KYLE,
Attorneys for Respondent.

Filed June 21, 1941.

HOWARD F. MCCUE,
Clerk.

THE SUPREME COURT OF KANSAS, TOPEKA.

John S. Dawson, Chief Justice. W. W. Harvey, William A. Smith, Walter G. Thiel, Hugo T. Wedell, Harry K. Allen, Homer Hoch, Justices.
E. E. Clark, Clerk.
S. E. Else, Reporter.

June 24, 1941.

Mr. C. H. Cochran
Box 2, Lansing, Kansas

DEAR SIR:

Your letter of June 22 in re case No. 35 156, received and in answer will say that while the court had under consideration the merits of your case it also considered your objections to procedure.

Pursuant to your letter of the 18th I have been in process of preparing a certified transcript containing a copy of your petition, all pleadings and orders of the court and have it ready to forward. However, if you plan to file a motion to stay the judgment I think a copy of this motion and the order of the court should be incorporated in the transcript preceding my certificate. Unless you file your motion for stay within the next few days, I will complete and forward a transcript to you.

Yours very truly,

(Signed) E. E. CLARK,
Clerk Supreme Court.

EEC:R

IN THE SUPREME COURT OF KANSAS, TOPEKA.

John S. Dawson, Chief Justice. W. W. Harvey, William A. Smith, Walter G. Thiele, Hugo T. Wedell, Harry K. Allen, Homer Hoch, Justices.
E. E. Clark, Clerk.
S. E. Else, Reporter.

July 1, 1941.

Mr. C. H. Cochran
Box 2, Lansing, Kansas

DEAR SIR:

Your motion to hear case and the one to stay judgment were received and filed, submitted to the court, and I had expected a reulin before this and for that reason had not replied to your letter of the 26th. Since that time I have received copies of the motion to subpoena witnesses and have also submitted them to the court for its consideration, along with other matters pending in your case No. 35,156.

I anticipate that the court will rule on these motions either Thursday or Saturday of this week, and as soon as rulings are made I will complete the transcript you requested in connection with applying to the United States Supreme Court for a writ of certiorari.

I am unable to find in the records or files that you served any notice of any kind as to certiorari proceedings.

Yours very truly,

(Signed) E. E. CLARK,
Clerk Supreme Court.

(Copy of Original)

Copy.

STATE OF KANSAS, KANSAS STATE PENITENTIARY, LACEY M. SIMPSON, *Warden.*

Lansing, Kansas.

January 24, 1934.

Dr. James M. Scott,
Board of Administration,
Topeka, Kansas.

DEAR DR. SCOTT:

I am enclosing herewith a petition C. H. Gochran wishes to have filed in the Supreme Court.

Sincerely,

LACEY SIMPSON,
Warden.

(*Parole attorney does not approve.*)

Returned Jan. 27th 1934.

NOTE:

This letter has reference to Appeal papers.

Copy.

STATE OF KANSAS, EXECUTIVE DEPARTMENT, TOPEKA.

December 21st, 1936.

Mr. C. H. Cochran
Box 2, Lansing, Kansas.

DEAR SIR:

I have your letter of the 17th, and in answer wish to say that I do not have any evidence that you are not guilty of the crime you were convicted of in Oklahoma, and you admit the escape from jail which is a felony. Leaving out the Oklahoma *offense you should have been given a sentence of 10-20 years* under the habitual criminal act. You certainly cannot expect me to take your unsupported statement as sufficient to warrant me in finding that your conviction in Oklahoma was fraudulent or oppressive.

A man is presumed to be innocent until he has been found guilty by a court or jury and this guilty must be found beyond a reasonable doubt, but after conviction the burden is then on the defendant to prove his innocence.

The board of administration did not prevent you from appealing your case to the Supreme court. It is time to get down to business in this matter and produce the sworn statements as to the facts you must show to secure relief.

Very truly yours,

A. S. FOULKS,
Parole Attorney.

ASF/w

NOTE:

Refer: to Journal record of Oklahoma Commitment and Affidavits Attached.

Copy.

STATE OF KANSAS, EXECUTIVE DEPARTMENT, TOPEKA.

December 26, 1936.

Mr. Charles H. Cochran
Box 2, Lansing, Kansas

DEAR SIR:

In answer to your letter of the 24th I wish to advise you that the statement of your mother as to your mental condition when you pleaded guilty in Oklahoma is not sufficient. She may not be competent to pass on the question of your sanity.

I had a very severe case of Typhoid Fever myself many years ago but it did not affect my mind. The affidavits stating that you had Typhoid Fever would be of little value if I had the originals but the copies have no value to me. The warden did not swear to anything. I am afraid your hope is based mostly on your statement and your desire to be free. We do not disregard the judgments of the courts except upon very strong proof.

Very truly yours,

A. S. FOULKS,
Parole Attorney.

ASF/w

Re: Affidavits; Copies of which are attached to Writ of Certiorari.

Copy.

STATE OF KANSAS, OFFICE OF ATTORNEY GENERAL, TOPEKA.

September 2, 1937.

Mr. C. H. Cochran, No. 3608
State Penitentiary, Lansing, Kansas.

DEAR SIR:

I wish to acknowledge your letter of August 18, 1937, relative to your conviction and subsequent sentence to the penitentiary.

I regret that this office cannot aid you in the matter of securing your release, or in the matter of securing a rehear-

ing of your case. By statute, it is the duty of the members of this office to oppose any attempt, by any prisoner in the State Penitentiary, to secure his release therefrom by legal proceedings.

Regretting that I cannot aid you personally, I am

Very truly yours,

CLARENCE V. BECK,
Attorney General.

WES:AN

NOTE:

Re: efforts to secure orderly hearing in the State Court on Habeas Corpus.

(Copy)

THE SUPREME COURT OF KANSAS, TOPEKA

March 5, 1941.

Mr. Charles H. Cochran,
Lansing, Kansas.

DEAR SIR:

Answering your letter of February 23, I wish to advise that before this court would make any order requiring the delivery to you of court files, Pleadings, etc., it would be necessary for you to state in a formal application the particular pleading or paper you desire that is necessary in the preparation of the hearing of your case in this court.

I asked Mr. Bradfield, in the Governor's office, whether or not he had the papers in your case. He informed me that he had and that they would be delivered to the court whenever the court desired them. Today he informs me that he notified Mr. Amrine to deliver to you such papers as you need in the preparation of your appeal pending in this court.

To date neither Mr. Bradfield, Mr. Amrine nor anyone else has filed anything in opposition to your appeal.

Yours very truly,

E. E. CLARK,
Clerk, Supreme Court.

NOTE. Re: Seizure of motions and evidence addressed to the Court.

(Copy)

THE SUPREME COURT OF KANSAS, TOPEKA

March 15, 1941.

Mr. C. H. Cochran,
Box 2,
Lansing, Kansas.

DEAR SIR:

Herewith I enclose a copy of the order of the court relating to your application for a Writ of Habeas Corpus and your appeal from the district court of Leavenworth County, Kansas, No. 35156.

Answering your letter of March 12 beg. to advise that we have not as yet received the papers you mentioned, which you say should be in our possession. Neither the respondent nor Mr. Bradfield have filed any pleadings or other papers in connection with these cases.

Yours very truly,

E. E. CLARK,
Clerk Supreme Court.

OFFICE CLERK SUPREME COURT.

Topeka, Kan., Jul. 3, 1941.

DEAR SIR:

The Motions to hear for stay and to subpoena witnesses in the case of In re C. H. Cochran for writ of habeas corpus vs. Amrine. No. 35,156.

All motions denied.

Very respectfully,

E. E. CLARK,
Clerk Supreme Court.

THE SUPREME COURT OF KANSAS, TOPEKA

July 1, 1941.

Mr. C. H. Cochran,
Box 2,
Lansing, Kansas.

DEAR SIR:

Your motion to hear case and the one to stay judgment were received and filed, submitted to the court, and I had expected a ruling before this and for that reason had not replied to your letter of the 26th. Since that time I have received copies of the motion to subpoena witnesses and have also submitted them to the court for its consideration, along with other matters pending in your case, No. 35,156.

I anticipate that the court will rule on these motions either Thursday or Saturday of this week, and as soon as rulings are made I will complete the transcript you requested in connection with applying to the United States Supreme Court for a writ of certiorari.

I am unable to find in the records or files that you served any notice of any kind as to certiorari proceedings.

Yours very truly,

E. E. CLARK,
Clerk Supreme Court.

NOTE: Dates of Motio to dismiss.

A STATEMENT OF FACTS.

In Re C. H. COCHRAN.

To The Hon. Walter A. Huxman,
Governor of The State of Kansas,
Topeka, Kansas.

YOUR EXCELLENCY:

Herein contains the true facts in regards to the past record of your petitioner, C. H. Cochran, now confined in the Kansas state Prison, on a charge of forgery in the 2nd degree, for which your petitioner feels it his duty, as

a party concerned, to bring forth the facts that surrounds the errors of the judgment assessed in the case against your petitioner.

The records will show that your petitioner was denied the right to a fair and impartial trial for the following violations here cited.

1st. That he was denied the right of his lawful challenges to the jury.

2nd. That he was denied the right to testify in his own behalf or to subpeona witnesses in his behalf.

3rd. That the defense attorney, Harry B. Davis, did wilfully and knowingly gave false testimony that incriminated the defense.

4th. That the State failed to show that the defendant knew that the check was worthless, in so much that it failed to prove that the defendant wrote the check.

5th. That the judgment was erroneous, in that the defendant had not be properly convicted prior 1928, for which the State at that time assessed a double sentence.

The petitioner C. H. Cochran, was in 1919, while being accused of a crime in Oklahoma, was a child, age 17 and suffering from the malignant typhoid fever, was arrested in Tulsa, Oklahoma, and at the instigation of the officers, the mother of the defendant, did enter a plea that committed the defendant to five years in the State Reformatory, in this case the defendant did not plea guilty, but the mother of the defendant did throw the youth on the mercy of the court, and she herself entered the plea, against the defendants protests. To this error the petitioner furnishes the affidavits of his mother, to substantuate this statement. Your petitioner having been born on the 12th day of December, 1901, was at the time when the said crime, of larceny of a car, was to have been committed, was 17 years of age, mentally incompetent, was after the mother was unduly influenced by the Officers of the court, committed to the Reformatory for a crime that he could not of committed, in that he was not able, physically or mentally,

and that the Mother was not aware of the rights of the defendant, or finnancially able to aid the defendant, thinking that the leniency of the court was the best for the defendant. Later the automobile was discovered in the possession of the thief who pleaded guilty to the theft. Which exonerated the prisoner.

In 1927, your petitioner, while a resident of Wellington, Kansas did buy an automobile from a used car agent, carrying insurrence of fire, destruction and thief, to the protection of the agent. In 1927 your petitioner while driving in the evening with his wife and daughter, did not discover until he was very near, that a car was parked in the highway without lights or occupant, your petitioner turned the car over and demolished the car and left it in the right of way of the road. To this your petitioner notified the agent, and the agent collected the insurrence then sought to prosecute the petitioner for the balance due. The dealer had the petitioner arrested, charged him with concealing mortgage property. Your petitioner was threatened with a long term in the state prison, and being unable to pay they committed the defendant to the county jail. The sheriff left the prisoner in the office of the jail while he went off, the prisoner, ask to be fed and the wife of the sheriff said that she could not feed him until the sheriff arrived, the prisoner arose and went to a cafe and eat his supper, thereupon the sheriff sought the prisoner for escaping jail. The charge of concealing mortgage was dropped and the prisoner pleaded guilty to the charge of escaping jail and was sentenced to a double sentence of two to four years, in the state penitentiary for the said charge, using the said charge or commitment of Oklahoma against the prisoner. Your petitioner served the entire sentence and was discharged, with his citizenship restored. Of this crime of jail escape, your petitioner feels that he was guilty and pleaded so, but the judgment was in fault.

In 1931, your petitioner, went into the dry cleaning business in the City of Harper, Kansas. Become a good citizen and joined the church, tried to gain the respects of the community. In 1932 a driver for the firm which your petitioner operated, accepted a bad check in payment for cleaning did by his firm. Your petitioner, not knowing the

value of the check, cashed it at a place the he had did business with for several months and which he carried a monthly account, the account was paid with this check and returned to Harper, resumed his work and having not received notice of the protest of the check, either verbal or written, this will be ascertained by the testimony given by the one complaining witness E. E. Evans. At no time was the firm notified that the check was worthless, or even given an opportunity to make the check good. Criminal prosecution was started and the defendant was not at no time given the right to testify and show the jury where he received the check or how he came into procession, or the knowledge of its value. The state refused to subpeonea the wife of the defendant for a witness, as she handled the check before your petitioner, as she acted as cashier, she listed all checks handled by the drivers. Neither would the state subpeonea the driver of the truck that took in the check while enroute on his daily route.

To all of this was added the denial of the rights to testify in own behalf, the right to lawfully challenge the jury, the introduction of suborn testimony by the state, with wilfull knowledge that it was suborn and with malice to the defendant. The party that introduced the said testimony, later held a lengthy conversation with a member of the jury while the bailiff was absent.

Having tried your petitioner for the crime of forgery, making and passing of a check, the jury found your petitioner guilty of passing of which there was not one iota of evidence to show that he knew the check to be worthless.

Upon the opening of the trial, the county attorney made this statement to the jury which jeopardized the prisoners chances for a fair trial. statement: Gentlemen of the jury this man has been convicted for forgery before and it is your duty to find him guilty because of his former record * * *

Since your petitioner has been incarcerated, he has secured evidence in his behalf that both the verdict and judgment in the case is erroneous, unjust and prejudicial by the state.

Your petitioner was forcibly restrained from his timely appeal of his case by the last administration, this fact was

acknowledged by Mr. C. W. Wilson, Record Clerk at the prison to the pardon and parole attorney. I was denied to place before the court for reviewal of the constitutional violations and the right of processes that would of eliminated this unusual judgment in the case. I cannot sit out the reasons for this restraint.

Documentary evidence has been destroyed, all rights to correspond with the courts had been denied, all correspondence was confiscated that went to prove the erroneous process as well as judgment in this case.

Your petitioner feels that under the circumstances, the unjustness of the sentence, the abuse of the personal rights as well as his constitutional rights as well as the facts that can be acquired from the court records, that His Excellency, The Governor of the state of Kansas, will take into consideration, the fairness and justice in his petitioners cause and grant him a commutation of sentence, from life to that of a statute sentence of which he is entitled to, under the statute for which he was charged, for forgery 2nd degree which calls for one to ten years.

Your petitioner, being an indigant man and not able to employ competent counsel has ask Mrs. Emma L. Hinton, Mother Hinton, to represent and lay before His Excellency, the facts as which your petitioner feels is meritoreous and of which he leaves the findings in the fairness and justness of His Excellency, the Governor.

Your petitioner was convicted in the District Court of Sumner County, for the crime of forgery 2nd degree, May 15th, 1933, and the reason for the increased penalty was; an invalid Reformatory commitment, and the commitment on a plea of guilty to escaping custody of the law, in the Sumner county district court, in 1928. In such case the State assessed a double sentence, for the Oklahoma commitment in 1919, which was in want of justice and proper procedure, and was void for neglect of the court to recognize the rights of the defendant. And that evidence to support such contentions should be recognized in the meritorious cause of the petitioner, and the outstanding facts regarding the case of which he is now serving time, a life sentence for a crime that he was not able to defend himself, and was not guilty of any knowledge that the check was worthless,

and could not therefore, be guilty of a crime with a wilful intent to commit one.

Therefore, Your Excellency; your petitioner prays that due consideration and mercy be extended to your petitioner, in the name of justice.

Respectfully submitted,

CHARLES H. COCHRAN,
Petitioner.

AFFIDAVIT.

To whom these presents may concern;

Greetings,

I, C. H. Cochran being of lawful age, solemnly swear that I was born on the 12th, day of December, 1901, in the city of Verona, county of Lawrence, State of Missouri, of American parentage and that I, the said C. H. Cochran, am a citizen of the United States and the state of Missouri, And that the foregoing statements of facts are true in every detail. Present age, 36 yrs. 2 months.

C. H. COCHRAN,
Affiant.

STATE OF KANSAS,
County of Leavenworth, ss:

Subscribed and sworn before me this 7 day of February A. D. 1938.

R. D. PAYNE,
Notary Public. (SEAL.)

My Commission Expires, 18 day of April A. D. 1941.

STATE OF KANSAS, EXECUTIVE DEPARTMENT, TOPEKA.

March 6, 1939.

Mr. C. H. Cochran
Box 2, Lansing, Kansas.

DEAR SIR:

After careful consideration of your application for executive clemency, the same has been denied.

Yours very truly,

LEROY BRADFIELD,
Parole Attorney.

LB/w

STATE OF KANSAS, EXECUTIVE DEPARTMENT, TOPEKA.

July 6, 1939.

Mr. C. H. Cochran
Box 2, Lansing, Kansas.

DEAR SIR:

In answer to your letter of the 2nd, please be advised that I do not believe an application for executive clemency in your case would be acted upon favorably at this time. However, you may do as you wish with regard to advertising. The records here show that your application was denied on March 6, 1939, and it would be very unusual to take favorable action in the matter, such a short time after the application was denied. Also I think I should advise you that in the event application for clemency is made, the matter will be considered and action taken, on the theory that you are guilty, of the crime for which you are serving.

I will be glad to talk to you the first time I am at the institution for the purpose of hearing grievance cases, if the warden places your name on the list of those to be heard.

Yours very truly,

LEROY BRADFIELD,
Parole Attorney.

LB/w
Coram Nobis not recognized in Kansas Law.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 510

In the matter of CHARLES H. COCHRAN for the Writ of Certiorari, *Petitioner,*

vs.

THE STATE OF KANSAS, *Et Al.*

AFFIDAVIT.

I, Charles H. Cochran after being duly sworn, solemnly avers that during the period of 1933 up until now, I have

been consistantly denied every right to a lawful, proper and orderly redress in the courts of the State of Kansas, because of personal molestation, unlawful seizure of evidence, impounding of applications and by coercion by the agents and officers of the State of Kansas.

I further swear that during the time this case was pending in the Kansas Supreme Court, records, evidence and mail was "impounded and seized by the Respondent and during that time I sent to the Clerk of the Supreme Court a person by the name of Emma L. Hinton to make such representations to the court and request that such papers be submitted to the court, all of which was denied and the evidence and pleadings were never submitted that the court could review them.

These papers were held and impounded by Mr. LeRoy Bradfield, Pardon attorney. (See letter from Mr. E. E. Clark, Clerk of the Supreme Court of Kansas on file in the case at bar)

The petitioner and affiant swears that the conviction upon which the State of Kansas has held to be valid in the State of Oklahoma, was not procured by Due process of law, in that said commitment was contrived by undue influence of the Tulsa County Oklahoma authorities by insistence upon the mother of the defendant who was only 18 years of age and was not familiar with his constitutional rights, as to the right of counsel, and that the mother influenced the defendant to plead guilty to a charge which was a felony and to which the defendant was committed to the State Reformatory, and that such confinement does come under the provisions of the Statutory law to enhance the punishment imposed upon the affiant.

I further swear that the case No. 510 Cochran *vs.* The State of Kansas and others, was unlawfully impounded for 21 days after the said application was mailed to the Court, and that evidence and pleadings are still being impounded and seized while being mailed to the Court. That I am not permitted to carry an orderly correspondence with the Court.

I further swear that the Statement made by the Sumner County Attorney is very untrue in many details and that he has deviated from the pertinent allegations in the Writ.

I further swear that I owned and operated the Odorless dry cleaners of Harper, Kansas and that I did not personally receive a check of which I am charged in the information and that not one iota of evidence was introduced, to show that I knew that said check was worthless.

I further allege that I am not guilty of any crime or knowledge that one had been committed.

I further swear that the affidavits and evidence that has been consistantly "impounded by the officers and agents of the State was material in the preponderance of the evidence and that the Supreme Court of Kansas has and did knowingly denied the affiant the right of any and all defense in the case at bar.

The evidence having been procured through efforts of the affiant has been from time to time seized and destroyed to prevent the affiant from producing pertinent evidence before the court.

Affiant saith not further.

C. H. COCHRAN,
Affiant.

Witnesses.
Fred Cook
W. Walters.

C. H. COCHRAN,
Affiant.

Subscribed and sworn to before me this 16th day of September A. D. 1941. John M. Gerber, Notary Public in and for the County of Leavenworth.

My commission expires on the 27th day of January A. D. 1942.

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 31 1942
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 510

C. H. COCHRAN,

Petitioner,

vs.

THE STATE OF KANSAS AND MILTON F. ARMINE,
WARDEN, KANSAS STATE PENITENTIARY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF FOR THE PETITIONER.

H. THOMAS AUSTERN,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 510

C. H. COCHRAN,

Petitioner,

vs.

THE STATE OF KANSAS AND MILTON F. AMRINE, WARDEN, KANSAS STATE PENITENTIARY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF FOR THE PETITIONER.

Opinion Below.

The opinion of the Supreme Court of Kansas (R. 60-63) is reported in 153 Kan. 777, 113 P. (2d) 1048 (1941).

Jurisdiction.

The judgment of the Supreme Court of Kansas was entered June 7, 1941 (R. 59). Motions for rehearing, for subpoenas to witnesses and for stay of judgment were denied

July 3, 1941 (R. 72). The petition for writ of certiorari was filed August 13, 1941 (R. cover) and was granted October 13, 1941 (R. 72). The jurisdiction of this Court rests upon Section 237(b) of the Judicial Code, as amended.

Questions Presented.

1. Whether the action of prison wardens and other State officials in forcibly preventing petitioner from pursuing a criminal appeal afforded by State statute until after the time for such appeal had expired, was in violation of the equal protection clause of the Fourteenth Amendment.

2. Whether, if such discriminatory action was a denial of a constitutional right guaranteed by the Fourteenth Amendment, the commitment under which petitioner is being held is constitutionally void.

3. Whether denial to a defendant in a criminal prosecution of the use of compulsory process for witnesses in his defense is a violation of the due process clause of the Fourteenth Amendment.

4. Whether denial to a defendant in a criminal prosecution of the right, upon his so requesting, to testify in his own defense is a violation of the due process clause of the Fourteenth Amendment.

5. Whether the factual determinations of the court below have any support in the record.

6. Whether the court below erred in refusing to afford petitioner an opportunity to prove the issues of fact controlling the constitutional validity of his detention.

Constitutional Provisions and Statutes Involved.

The relevant provisions of the Federal and Kansas Consituations, and Kansas statutes are set forth in Appendix A.

Statement of Facts.

On January 8, 1941 petitioner filed an original application for a writ of habeas corpus in the Supreme Court of Kansas (R. 2-20). Petitioner alleged that he was imprisoned by the respondent, the Warden of the Kansas State Penitentiary at Lansing, Kansas, pursuant to a sentence and commitment for life by a Kansas District Court; and that his imprisonment was unlawful for a number of reasons, *inter alia*, that the trial resulting in his conviction and commitment had been constitutionally invalid for lack of due process, that following his imprisonment he had been unlawfully prevented by prison officials and other authorized officers of the State from pursuing the rights of appeal afforded by State law to correct reversible errors in his trial, and that, after the time for appeal had expired, he had been prevented from obtaining relief through habeas corpus (R. 3-4). To the petition were annexed: (1) a brief and statement of authorities (R. 5-7); (2) a verified Statement of Facts (R. 7-13); (3) a copy of the journal entries, verdict, and judgment of the trial court;[1] (4) a series of affidavits by petitioner himself supporting the allegations (R. 14-16); (5) a "motion" for an order directing that the transcript of the trial in the Kansas District Court be certified to the Supreme Court (R. 16); and (6) a series of affidavits by petitioner and others in support of his allegations (R. 17-20).

The Application.

Taken together these documents alleged that on April 13, 1933, petitioner had been arrested on a warrant charging the crimes of both forging and knowingly passing a

[1] These appear in the record on file in this Court (fol. 15) but have been omitted in printing at R. 14, since they appear in identical form in the printed record at R. 44-47.

worthless check in the amount of $12.60 (R. 7). On May 15, 1933 he was brought to trial. With respect to his trial, petitioner charged a series of errors which would have been ground for reversal on appeal had he not later been prevented from appealing. *First*, he claimed that he had been deprived of the right to compulsory process to secure witnesses for his defense. Specifically, he alleged that on April 27, 1933, he had asked that six named witnesses who could establish his innocence be subpoenaed (R. 7-8), and that

> "All of these material witnesses were excluded from the list to be subpoenaed for the trial and were not present" (R. 8).

He further alleged that at the trial on May 15, 1933, his request for these witnesses was renewed but that they were never called in his defense (R. 8). As a *second* basis for error during the course of the trial, petitioner alleged that the prosecuting County Attorney had unlawfully and erroneously stated to the jury that the defendant was an ex-convict who had been convicted several times before for forgery (R. 8); *third*, that his request that he be permitted to take the witness stand in his own defense had been denied (R. 9); and *fourth*, that the verdict had not been supported by the evidence (R. 10).[2] Each of these errors was substantial and under Kansas law would have been grounds for reversal on appeal.[3]

---

[2] Other errors, less clearly set forth, are also charged and are respectfully submitted for the consideration of this Court. These apparently involve refusing the defendant permission to examine the jury on *voir dire* (R. 8) and prejudicial testimony on the witness stand by defendant's own counsel (R. 9).

[3] *Compulsory process:* KAN. CONST., Bill of Rights, Sec. 10, KAN. GEN. STAT. (Corrick, 1935) Secs. 62-1309-12, both quoted in Appendix A, *infra*, pp. 56-57; *State* v. *Roark*, 23 Kan. 147 (1879). *Prejudicial conduct of County Attorney: State* v. *Alexander*, 89 Kan. 422, 131 Pac. 139 (1913); *State* v. *Netherton*, 128 Kan. 564, 279 Pac. 19 (1929). *Right to testify:*

The trial resulted in a verdict of guilty on the charge of knowingly passing a worthless check for $12.60 and an acquittal on the charge of forging this check (R. 10, 45). On May 29, 1933, petitioner was sentenced to a term of life imprisonment at hard labor as an habitual criminal[4] (R. 46).

So much for the trial court proceedings and the alleged reversible errors and constitutional invalidity. The application for habeas corpus and verified attachments further alleged that from the time of his imprisonment on May 31, 1933, the prison authorities and other officials of the State had maintained a "blockade" against him, had confiscated all letters and documents sought to be filed with the courts, and had thus forcibly prevented him from exercising his lawful rights to appeal the conviction and sentence to life imprisonment (R. 3). Specifically, petitioner alleged, *first*, that an attempt on his part to file a motion for a new trial on the basis of newly discovered evidence showing his innocence had been blocked by the confiscation of his motion and affidavits by the prison authorities (R. 10); *second*, that he had been forcibly prevented from filing an appeal until the two-year period for appeal had expired (R. 6, 10, 17-18); and *third*, that for some time thereafter he had been prevented from applying for habeas corpus (R. 10). The application stated that petitioner had specific evidence showing that the Warden and named Deputy Wardens, the

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Cf. KAN. GEN. STAT. (Corrick, 1935) Secs. 62-1420-21. *Verdict not supported by evidence: State* v. *Ridge*, 144 Kan. 402, 61 P. (2d) 109 (1936). Moreover, in our argument we contend that under the due process requirements of the Fourteenth Amendment the denial of compulsory process and the refusal to permit defendant to testify in his own defense, rendered the commitment constitutionally void under the Federal Constitution. *Infra*, pp. 36-53. On appeal in the State court these issues could have been raised.

[4] KAN. GEN. STAT. (Corrick, 1935) Sec. 21-107a. Conviction for a third time of a felony carries a life sentence. Neither of the alleged former convictions had been related to forgery, and petitioner has consistently urged that the first, for theft of an automobile (R. 46), was invalid because he was a minor at the time (*Petition for Certiorari*, p. 38).

State Pardon Attorney, and other officials and agents of the State had collaborated in this "blockade" and that letters to his attorneys and others had been destroyed (R. 3, 11, 13, 17). In support of these allegations he submitted copies of various communications from the Warden (R. 11); an affidavit alleging that on June 3, 1933 and again on June 10, 1933 petitioner had mailed his appeal papers to the Kansas Supreme Court and that these had been confiscated and destroyed by the Deputy Warden (R. 18); and supporting affidavits of three other persons substantially corroborating petitioner's attempts to file an appeal immediately following his imprisonment (R. 17-18).

Finally, petitioner alleged that in 1935 he had succeeded in filing [5] an application for habeas corpus which was considered by the Kansas Supreme Court, *Cochran* v. *Simpson*, 143 Kan. 273, 53 P. (2d) 502 (1936). He asserted that this earlier application had not raised the issues now presented in that it

> "never at any time brought forth the act of the Lacy M. Simpson, Warden, E. M. Stublefield, Deputy Warden, Nor the acts of the [trial] court of Sumner County as an issue to be decided" (R. 14).

Petitioner's affidavit stated that the reason these questions had not been presented was that "being a layman the petitioner never realized that the officials had no Authority to deny a lawful appeal" (R. 14).

Preliminary Rulings.

Two months after filing his application for habeas corpus in the Kansas Supreme Court, petitioner on March 11, 1941

[5] Not through the prison mails but by getting it through an "underground method" to his sister (R. 14). *Cf. Ex parte Hull*, 312 U. S. 546, 548 (1941). The reference at R. 14 to "1936" is obviously a misprint since the case number given by petitioner identifies the application as that filed in 1935 and decided in 1936 in *Cochran* v. *Simpson, supra*.

filed a motion for leave to appear before the court to present his evidence in support of the allegations in the application (R. 20).

Consideration of the application in the court below was quite confused. Nothing was done for two months. Then, on March 15, 1941, the Supreme Court ordered the original application for habeas corpus docketed (R. 21). By the same order the Supreme Court consolidated petitioner's original application with his appeal from an order of the Kansas District Court denying a similar application for habeas corpus, and directed the petitioner, as an appellant pursuant to the Kansas practice, to file an abstract and a brief (R. 21).[6] Decision on petitioner's motion to appear before the Court was postponed[7] (R. 21).

Respondent's Return.

On April 17, 1941 respondent filed a return (R. 37), to which were attached (1) copies of the judgment and sentence, the information, and the journal entries of the trial court (R. 40-47); (2) a copy of a letter from the County Attorney to the Warden of the Kansas State Penitentiary recommending "that you keep this party under close supervision at all times, otherwise he will cause you trouble" (R. 48); (3) an affidavit by the County Attorney stating that the facts alleged with respect to improper argument by him were untrue (R. 49); and (4) a copy of petitioner's

[6] The record facts concerning this appeal and the manner in which it was treated by the Kansas Supreme Court are set out in the Appendix. *Infra*, pp. 65-68. For purposes of consideration in this Court the allegations in the original application and verified attachments, the statements in the respondent's return, subsequently filed, and the petitioner's traverse thereto, alone need be considered.

[7] On March 18, 1941 petitioner renewed his motion to appear before the Kansas Supreme Court, pointing out that he was without counsel and that he wanted an opportunity to present his evidence (R. 21-22). On April 14th he filed a further document entitled a Motion to Sustain Petition in which he protested against further delay (R. 35-36).

fingerprint record on file in the United States Bureau of Investigation (R. 53). In addition, counsel for respondent filed a brief which stated that the charges that the Warden and other State officials had prevented petitioner from appealing were "ambiguous and unsubstantiated" (R. 55).

Petitioner's Traverse and Offers of Proof.

On April 23, 1941, petitioner filed an Answer to Respondent's Brief and Abstract in which he stated that his allegations were true and could be proved and that the statements in the return were untrue (R. 56-57). Though captioned as an Answer to Respondent's Brief and Abstract, this document may properly be taken as an answer and traverse to the return. *Cf. Lee* v. *Prather*, 146 Kan. 513, 71 P. (2d) 868 (1937).

On May 5, 1941, the Kansas Supreme Court made an entry in the consolidated case, stating that "this cause comes on for hearing upon the appeal papers and the abstract of record from the district court" and that the case had been "submitted upon the briefs of both parties and taken under advisement by the court" (R. 57).[8] On May 10, 1941, petitioner filed a series of Objections to Procedure of Court in which he objected to the consideration of the cause without opportunity to present evidence in support of his application (R. 58-59).

Decision and Opinion.

On June 7, 1941, the Supreme Court denied the original application for habeas corpus and dismissed the appeal from a similar denial in the district court (R. 59). Its opinion, filed the same day, indicates that the court based its

[8] For discussion of the petitioner's and possibly the lower court's confusion between the appeal from the district court application and the original application for habeas corpus in the Kansas Supreme Court, see Appendix C, *infra*, pp. 65-68.

judgment alone upon a consideration of the original application, the return, and to some extent on statements in respondent's brief and abstract (R. 60-63).

Viewed in the light of the Federal questions raised by petitioner, the opinion of the court below does not clearly indicate its basis for decision. On the question whether forcibly preventing petitioner from exercising his right of appeal was a denial of equal protection, the court apparently refused to accept petitioner's affidavits and offers of proof on the theory that his failure to include this ground in his earlier application for habeas corpus wholly destroyed their credibility.[9] It stated that

> "There is nothing in the record to indicate that the petitioner attempted to appeal his case to the Supreme Court." (R. 62).

While admitting that

> "Soon after the petitioner was confined in the penitentiary he made some effort to file a habeas corpus petition. *Under rules then prevailing at the penitentiary these were not permitted to be sent out, and this much of the allegations of the petitioner in this case has some basis*" (R. 62, *italics supplied*),

the lower court suggested that these conditions did not long prevail and that because petitioner in October, 1935,

[9] There is no claim in the present case that the decision below on this point turned on an adequate non-federal ground. As will be noted below, the Kansas Supreme Court did not take the position that under State law the Federal questions raised could not be examined on habeas corpus. Not only does Kansas law permit such inquiry but in the present case the court considered the issue of discriminatory denial of appeal. *Infra*, pp. 17-24. Nor did it base its decision on the view that in Kansas the doctrine of *res adjudicata* applies to habeas corpus. This is not the Kansas law, and respondent agrees that the opinion below is not to be so interpreted. *Respondent's Motion To Dismiss*, p. 12. The only hearing of the previous application for habeas corpus was on the issue of fact as to whether petitioner had in fact attempted to appeal his original commitment.

had finally succeeded in filing a habeas corpus petition in which he did raise this ground, his affidavits and offers of proof could not be accepted.

> "Some of the questions sought to be raised in this proceeding were presented to the court at that time. All of them might have been and should have been presented in that proceeding. While a court should be liberal in entertaining habeas corpus proceedings, there is no reason to reconsider the same questions repeatedly." (R. 62).

On the asserted violation of the Fourteenth Amendment in the denial of compulsory process for witnesses and the refusal to permit petitioner to testify in his own behalf, the court below in effect refused to consider these issues. The allegations concerning them had not been controverted in the return. The court below had not granted petitioner's request that the transcript of the trial be secured or permit him to prove his allegations in open court. The opinion recites that it entertained the "case only because of plaintiff's allegations respecting the records in the trial court" (R. 62-63). Yet without the trial transcript or other proof concerning the trial before it, the court concluded

> "There is nothing in the record of the proceedings in the court below to indicate any irregularity in the petitioner's trial and conviction, and certainly nothing to indicate that his commitment was void for any reason." (R. 62).
>
> . . . . . .
>
> "No evidence has been offered to support these allegations other than the bare statement of the petitioner. The records of courts are not set aside upon the unsupported statements of a defeated litigant" (R. 63).

On this basis it denied the application (R. 59).

Petitioner's Further Offers of Proof.

On June 27, 1941, petitioner moved for a rehearing on the ground that the court's rejection of his application, without affording a trial on the issues of fact controlling the validity of his commitment, constituted a denial of a proper judicial inquiry on habeas corpus. He also charged that various affidavits had been removed from his original application and withheld from the court (R. 63-64). See Appendix B, *infra*, pp. 61-65. On the same day he filed a Motion for Stay of Judgment on substantially the same grounds, again asserting that the affidavit of the County Attorney was untrue (R. 65-66). At the same time he filed a Motion to Subpoena witnesses setting forth the names and addresses of seven witnesses whose testimony would support his application (R. 66). Accompanying this motion were four affidavits by these desired witnesses and others, in support of the charge in his original application that he had been forcibly prevented from filing any appeal, and copies of correspondence offered to show that statements in the affidavit of the County Prosecutor accompanying the return were incorrect (R. 67-71).

On July 3rd the Kansas Supreme Court denied each of these motions (R. 72).

On August 13, 1941, petitioner applied for certiorari which was granted on October 13, 1941 (R. 72-73).

Summary of Argument.

We contend that petitioner's application for a writ of habeas corpus specifically set forth three bases for asserting that his detention by respondent was constitutionally invalid. First, that the acts of the prison wardens and other State officials in forcibly and discriminatorily preventing him from appealing his original conviction within the time in which an appeal could be filed, was a denial of the equal

protection of the laws. Second, that denying him the right to compulsory process to secure witnesses for his defense at the trial was a deprivation of due process. Third, that preventing him from taking the stand to testify in his own behalf, when he requested to do so, was also a deprivation of due process. Each of these constitutional invasions rendered the original commitment void.

Under the law of Kansas each of these asserted grounds of invalidity under the Federal Constitution was open to inquiry on habeas corpus. As to the first, the court below apparently went no further than the question of fact whether an appeal had actually been sought and prevented; it took the position that petitioner's affidavits and offers of proof could not be accepted because his failure to assert this ground for relief in an earlier application for habeas corpus rendered any evidence he might bring forward unworthy of belief. On the second asserted ground of invalidity, based on denial of compulsory process, it is difficult to determine exactly what the lower court did other than that it refused to give petitioner an opportunity to prove his specific and uncontroverted allegations. On the third, it apparently did not even consider the question.

I.

In our argument we deal first with the determination of the lower court on the controlling question of fact whether petitioner attempted to appeal from his original conviction in 1933 and was thwarted by the prison wardens and State officials. The application as a whole reveals complete specificity of allegation on this point. The types of documents sought to be filed are set forth; the dates of confiscation of papers and forcible prevention of transmission are specified; the names of the prison wardens involved are given. These facts are shown not only by petitioner's

own affidavits but are corroborated by the affidavits of at least four other people. All of this evidence was proffered by petitioner who also repeatedly requested that he be allowed to bring his witnesses into court. Under Kansas law all of the proof offered could have been considered by the court. *Lee* v. *Prather*, 146 Kan. 513, 71 P. (2d) 868 (1937). There was no denial by respondent of the specific facts alleged, and complete absence of any controverting evidence. Petitioner's allegations and offers of proof were corroborated by the court's own recital that during the very period concerned, the rules and practices at this State prison precluded any prisoner from sending out any habeas corpus papers. That petitioner was singled out for rigorous treatment is likewise demonstrated by this record. Lastly, the circumstances surrounding the filing of his petition in this Court and his efforts to obtain relief in the Federal District Court for Kansas tend to confirm the truth of his charges.

The apparent basis for the court's rejection of this evidence is next examined. We analyze its view that none of the proffered proof was worthy of belief or even examination simply because petitioner, who is not a lawyer, had failed to include it in an earlier application for habeas corpus. Petitioner's present grounds for relief were not mentioned in his earlier application, and Kansas law does not preclude a further application in such circumstances. *In re Clyne*, 52 Kan. 441, 35 Pac. 23 (1893). Thus the omission in the earlier application of the charged suppression of appeal goes only to the credibility of petitioner and his proffered witnesses. We contend that petitioner's explanation that ignorance of his constitutional rights underlay his failure to urge this ground in the earlier application is complete and conclusive. The cumulative force of the affidavits submitted and offers of proof made, in reply to which there was not even a scintilla of contradictory evidence, was

not dissipated; and failure to accord even *prima facie* credibility to them was tantamount to a refusal to consider the issue. On this showing we contend that the determination of the court below on this controlling question of fact was without substantial basis and palpably erroneous.

On the facts adduced we urge that forcibly preventing petitioner from appealing constituted a violation of the equal protection clause of the Fourteenth Amendment. It is not argued that a State must afford an appeal in criminal cases, but only that when it does so it cannot discriminate in the fashion here disclosed. In the present case arbitrary action and systematic discrimination are clear. Since the acts of the prison wardens and State officials must be deemed the act of the State, a constitutional denial of equal protection is demonstrated.

The effect of such violation of constitutional right is to render the commitment void. If the discriminatory acts, which prevent a prisoner from appealing, cease within the time that the statutory appeal can be taken, adequate relief can be provided by permitting it to be filed. But where the unconstitutional discrimination continues beyond the time permitted for appeal, the prisoner must be discharged. This rule derives from the decisions of this Court in analogous cases. Its practical operation in those instances in which State officials act in the arbitrary and discriminatory fashion here shown will in no way interfere with the effective enforcement of the criminal law of a State.

II.

On the denial of compulsory process, we contend that the court made no determination on this question and that if its opinion is to be construed to mean that it did, the decision was without any substantial basis because peti-

tioner's specific allegations and offers of proof were not even controverted. On the basis of historical evaluation of the right to compulsory process, a consideration of what its denial means under present day conditions, and the controlling decisions of this Court as to what constitute the elements of a "fair trial", we argue that to deny to a defendant in a felony case the right to compulsory process is a deprivation of the due process of law guaranteed by the Fourteenth Amendment.

III.

The specific allegations of the refusal to permit defendant to testify in his own behalf after he had asked to do so, were not even considered by the court below. The history of the disqualification of defendants from testifying in their own behalf and the contradictory positions taken by the several States following the statutory removal of such disqualification, combine to show that the failure of a defendant to testify is deemed highly significant. Hence his ability to speak in his own behalf when he desires to do so is realistically one of the most important elements in demonstrating his innocence, and the *refusal* to permit him to speak, under present conditions, destroys the keystone of his trial. Such refusal is closely analogous to freedom of speech, if not a part of it. The failure of the lower court to consider this asserted denial of due process under the Fourteenth Amendment was clearly erroneous.

ARGUMENT.

I.

The Acts of State Officials in Preventing Petitioner From Appealing His Conviction Constitute Violations of the Fourteenth Amendment.

A. *The Conclusion of the Court Below That Petitioner Did Not Attempt to Appeal Is Without Substantial Basis and Palpably Erroneous.*

The first Federal question presented is grounded on the discriminatory action of the Warden and other authorized State officials in preventing petitioner from pursuing the right of appeal from the original sentence afforded to him by the statute law of Kansas. KAN. GEN. STAT. (Corrick, 1935) Secs. 62-1701-04; 62-1919; 60-3306-07. At the threshhold we are faced with the conclusion of the court below, set forth in its opinion, that "There is nothing in the record to indicate that the petitioner attempted to appeal his case to the supreme court" (R. 62). This conclusion is not only without substantial basis in the record; it is also palpably erroneous.

There can be no doubt that the court below considered this question of fact on which the assertion of constitutional denial is based. Under the law of Kansas the existence of facts, beyond the journal entries, which might render a judgment void, is open to inquiry in habeas corpus proceedings. The Kansas statute on habeas corpus permits the plaintiff to controvert the return or to allege new matter in avoidance and provides that the court "shall thereupon proceed in a summary manner to hear and determine the cause * * *." KAN. GEN. STAT. (Corrick, 1935) Secs. 60-2210-11, quoted in Appendix A, *infra*, pp. 59-60. These provisions would be without meaning if the face of the return were conclusive and the court were confined to

examination of the journal entries. The point seems settled in Kansas. See *In re Norton*, 64 Kan. 842, 68 Pac. 639 (1902); *In re Jarvis*, 66 Kan. 329, 71 Pac. 576 (1903), *In re Terrill*, 58 Kan. 815, 49 Pac. 158 (1897) (opinion in unofficial report); *cf. Levell* v. *Simpson*, 142 Kan. 892, 52 P. (2d) 372 (1935), app. dis. 297 U. S. 695 (1936); *In re Bundy*, 144 Kan. 64, 58 P. (2d) 80 (1936); *Lee* v. *Prather*, 146 Kan. 513, 71 P. (2d) 868 (1937). An analysis of the court's opinion, *supra*, pp. 8-10, indicates that it rejected petitioner's proofs offered in support of his charge that he was denied the guarantees afforded by the Fourteenth Amendment. Apparently the court based its determination almost entirely on the fact that in his habeas corpus application, filed five years earlier, petitioner had not raised the point and concluded from this that his allegations and the proffered proofs attached to the application could not be accepted and need not be examined. We do not understand that respondent takes any other view. See *Respondent's Motion to Dismiss*, pp. 11-13.

It is well settled that where violation of a constitutional right is asserted, this Court will of its own responsibility appraise the evidence.[10] In the present case an examination of the record abundantly demonstrates that the court below reached its conclusion by virtually disregarding petitioner's specific allegations and supporting affidavits and offers of proof, and did so in the absence of any denial in respondent's return or even a scintilla of controverting evidence. Its conclusion seems extraordinary in the face of its own finding that during the appeal period the prison rules had precluded the filing of habeas corpus (R. 62).

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[10] *Norris* v. *Alabama*, 294 U. S. 587, 590 (1935); *Pierre* v. *Louisiana*, 306 U. S. 354, 358 (1939); *Chambers* v. *Florida*, 309 U. S. 227, 229 (1940); *Smith* v. *Texas*, 311 U. S. 128, 130 (1940). See Nutting, *The Supreme Court, the Fourteenth Amendment and State Criminal Cases* (1936) 3 U. of Chi. L. Rev. 244, 257-58.

That the court's determination on this basic question of fact was palpably erroneous can be readily demonstrated by examining what petitioner specifically showed in his application, by scrutinizing the surrounding circumstances which the lower court itself recited, and by considering the failure of respondent to meet this issue directly or to furnish even a scintilla of controverting evidence.

In the first place, even the briefest examination of the application reveals the specificity of its allegations. The *documents* which petitioner prepared and unsuccessfully attempted to file *are particularized:* A motion directed to the trial court based on the discovery of new evidence showing his innocence and the accompanying affidavit were confiscated (R. 10, *cf.* Petition, p. 14). A request to secure the transcript of the trial in the committing court was denied by authorized officials (R. 10).[11] Appeal documents and appeal papers were repeatedly confiscated and destroyed (R. 3, 17, 18). *Dates are set forth*: June 3, 1933; June 10, 1933; June 14, 1933 (R. 17-18).[12] *Names are named:* Warden Lacey M. Simpson and Deputy Warden E. M. Stubblefield are alleged to have refused to mail petitioner's appeal (R. 3). Deputy Warden A. J. Graham is in one affidavit specifically charged with particular acts of con-

[11] It should also be noted that throughout the present proceeding petitioner has vainly endeavored to get this same transcript before the court. In his original application he included a "motion" that the Kansas Supreme Court have it sent from the committing court (R. 16). And throughout the proceeding he has complained that this record could not be obtained (R. 58).

[12] The fact that one of the affidavits appended to petitioner's application refers to the date of May 15, 1933, roughly two weeks before petitioner arrived at the penitentiary, supports rather than weakens the force of these detailed allegations. This may well be a typographical error. But even if it is not, it fails to support the suggestion in respondent's brief in the court below (R. 55) that the facts are fabricated. For if the case had been constructed, these minor inconsistencies, normal in testimony of witnesses as to events years removed, would not have appeared in these affidavits.

fiscation (R. 18). Another affiant, a prison welfare worker, confirms the particular acts of Deputy Warden E. M. Stubblefield (R. 27, 67). Others refer to seizure of documents by "Kansas prison officials" (R. 67, 68).[13]

In the face of this particularity of allegation and accompanying affidavits as to when and how and by whom petitioner was forcibly prevented from carrying out his efforts to appeal his sentence, neither the return of respondent nor his Abstract or Brief directly met the issue. None of the alleged acts of prison officials were denied. No affidavits, or even statements, from the prison authorities named in the application were proffered. Nothing was said in the return or in any of the exhibits to it. Instead petitioner's charges were merely termed in respondent's brief in the court below as "ambiguous and unsubstantiated" (R. 55). In place of supported denial by respondent, there was offered only the argument that petitioner had failed to urge this ground upon a former application for habeas corpus.[14]

Moreover, the circumstantial facts recited by the lower court itself thoroughly substantiates petitioner's showing.

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[13] Although these last three affidavits (R. 67, 68) were not attached to the application, they were part of petitioner's Motion to Subpoena Witnesses and should be regarded as part of the record since they were presumably considered by the lower court in the denial of this motion and of petitioner's motion for rehearing (R. 72). *Lee* v. *Prather*, 146 Kan. 513, 516, 71 P. (2d) 868, 870 (1937); cf. *Forest* v. *Holiday*, 313 U. S. 342, 350 (1941); *Gall* v. *Brady*, 39 F. Supp. 504, 506 (D. Md. 1941); *Mathews* v. *Swatts*, 16 Ga. App. 208, 210, 84 S. E. 980, 981 (1915). It should also be noted that the affidavits attached to the application were in the form of verified copies of the originals. Respondent did not in any way question the authenticity of these supporting affidavits.

[14] Indeed, respondent went to the extent of urging that petitioner presses his claim "some years later" and "has offered no proof or supporting evidence that this charge is true" (R. 54). It seems reasonably clear that as early as 1936 petitioner was urging that he had been prevented from appealing his original conviction since the State Parole Attorney referred to this issue in a letter in that year. See Appendix B, *infra*, pp. 61-65.

The court grants that during the entire period in which the time for appeal was running,[15] the prison officials refused to permit inmates of the jail to file petitions for habeas corpus,—a practice condemned by this Court in *Ex parte Hull*, 312 U. S. 546 (1941). It is difficult to believe that they would not have practiced the same ruthless disregard of an inmate's statutory rights and thwarted his attempt to send out appeal documents.[16] Indeed, the probability that petitioner was subjected to particularly rigorous treatment was greatly increased by the letter forwarded in May, 1933, at the time of his commitment, from the County Attorney to the Warden stating:

> "I would suggest that you keep this party under close supervision at all times, otherwise he will cause you trouble" (R. 48).

Finally, in weighing this uncontradicted showing, the court might well attach weight to petitioner's charges, *dehors* the record but sufficiently supported by Federal court records and the Clerk's files in this Court, that officials of the State of Kansas are still interfering with his access to the courts. There is considerable ground for believing that his petition for certiorari to this Court was held by

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[15] Judgment was entered and sentence imposed on May 29, 1933 (R. 46). At that time a defendant in a criminal case had two years after judgment within which to take an appeal. KAN. GEN. STAT. (Corrick, 1935), Sec. 62-1704. Although the court below remarks that the restrictive penitentiary rules preventing documents from being sent out "did not prevail long", it suggests that these remained effective until October 1935 (R. 62). Thus throughout the entire period within which an appeal might have been taken, it is virtually admitted on this record that petitioner could not have sent documents out of the prison.

[16] If the letter which petitioner asserts was removed from his application is authentic, it is almost conclusive on the question. This letter shows that on documents prepared by prisoners at the time the practice was to send them to the Parole Attorney who could, and in this instance did, refuse to approve their being sent out of the penitentiary. (Pet. p. 32, *infra*, Appendix B, p. 64.)

prison or other State officials for almost a month and that certain of his letters to this Court complaining of this action were likewise retained. See Appendix B, *infra*, pp. 61-62. Likewise, there is great difficulty in understanding how the State could on June 18, 1941 move to dismiss an application for habeas corpus to the United States District Court in Kansas on the ground that petitioner had applied to this Court for certiorari when petitioner had not even put his petition in the prison mails until July 16th and the petition did not reach this Court until August 13, 1941. See Appendix B, *infra*, pp. 62-63.

Accordingly, we submit that the conclusion of the court below, that petitioner never attempted to appeal, flies in the face of the record and is palpably erroneous. Its opinion statement that all of his "allegations are made in the most general terms, void of any specifically alleged, controvertible facts" (R. 61) alone demonstrates a virtual failure to entertain the application. And this resolution of facts controlling the constitutional validity of petitioner's detention is even more striking in view of his continued and insistent offer to produce his witnesses in court (R. 20, 21, 66). *Neal* v. *Delaware*, 103 U. S. 370, 395-97 (1880); *Carter* v. *Texas*, 177 U. S. 442, 448 (1900).

There remains the question whether because petitioner some five years earlied had succeeded in breaking the blockade against him [17] and had filed an application for habaes corpus, in which he failed to urge the questions now presented, his evidence must be rejected. It is submitted that the fact of this earlier petition for habeas corpus is immaterial.[18] The opinion of the Kansas Supreme Court on the

[17] In his affidavit accompanying the application petitioner states that he succeeded in having the 1936 petition filed by his sister after he had forwarded the papers to her by an "underground method" (R. 14).

[18] We do not understand the decision of the court below to be that failure to raise all possible issues in one application for habeas corpus precludes further application to the Kansas courts. Unless specifically provided by

earlier application for habeas corpus nowhere suggests that the issues here presented were raised. See *Cochran* v. *Simpson*, 143 Kan. 273, 53 P. (2d) 502 (1936). Yet because of this earlier application both respondent (R. 54) and the court below (R. 62) apparently concluded that petitioner's evidence should be rejected.

If this was the basis for decision, it was manifestly erroneous. Petitioner is not a lawyer, as is clearly shown by the papers appearing in this record. The record also shows that he believes his commitment improper for many reasons. A life sentence for the passing, in the course of his dry cleaning business, of an alleged forged check for $12.60, would lead only naturally to an attack first upon the obvious severity of the punishment. Thus petitioner's first habeas corpus application was directed merely to the invocation against him of the Kansas habitual offender statute which he claimed was inapplicable. More than that, his affidavit in the present case makes it perfectly clear that he did not at the time of this first application—which he had to have smuggled out of the prison—know that the prison officials had acted unlawfully in confiscating his appeal papers in 1933 and 1934. He states that the earlier petition for habeas corpus

> "was never mailed through the prison Authorities and regular mail channels *and being a layman the petitioner never realized that the officials* had no Authority to deny a lawful appeal." (R. 14.) (Italics supplied.)

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statute, and except in certain cases relating to custody of children, the doctrine of *res adjudicata* does not apply to successive applications for habeas corpus. See *Ex parte Royall*, 117 U. S. 241, 254 (1886); *Salinger* v. *Loisel*, 265 U. S. 224, 230 (1924); *People* v. *Shurtleff*, 355 Ill. 210, 189 N. E. 291 (1933); *cf. Kessler* v. *Strecker*, 307 U. S. 22, 25 (1939). The Kansas statute does not specifically preclude successive applications for habeas corpus. Moreover, since in the case at bar the Kansas Supreme Court considered petitioner's application, Kansas must be deemed not to have departed from the earlier State rule. See *In re Clyne*, 52 Kan. 441, 35 Pac. 23 (1893).

The situation thus presented is wholly different from that considered by this Court in *Salinger* v. *Loisel*, 265 U. S. 224 (1924), and *Wong Doo* v. *United States*, 265 U. S. 239 (1924) upon which respondent relies. *Respondent's Motion To Dismiss*, pp. 9-12. In those cases the applicant had advanced the *same* grounds in his first application. In the *Salinger* case, the three petitions alleged the same substantive reasons against extradition. In the *Wong Doo* case, the first petition had raised the same ground set forth in the second but petitioner had offered no proof.[19] Here petitioner alleges facts, not formerly urged, going to the constitutional validity of his commitment. His reasons for the former omission are clear, substantial, and related to the very causes underlying the invalidity of his detention.

The situation presented in the case at bar is no different from that adverted to by this Court in *Johnson* v. *Zerbst*, 304 U. S. 458, 463, 465 (1938), and *Smith* v. *O'Grady*, 312 U. S. 329, 333-34 (1941). Since 1936 petitioner has repeatedly renewed his efforts in both State and Federal courts to review the validity of his commitment (R. 13, 29), despite alleged attempts to hamper these efforts which the circumstances surrounding his petition for certiorari in this Court hardly negative. See Appendix B, *infra* pp. 61-62.

Accordingly it is submitted that the determination of the court below that petitioner in fact never attempted to appeal is without substantial basis and palpably erroneous.

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[19] This Court pointed out that "No reason for not presenting the proof at the outset is offered," 265 U. S. at 241, thus intimating that even a second application urging the *same* grounds would be considered if reason were shown. Here the grounds urged were not even mentioned in the earlier application, and good reason for this failure is shown.

B. *Forcibly Preventing Petitioner From Pursuing His Appeal Was a Denial of Equal Protection of the Laws.*

We come then to a consideration of whether on the showing made by petitioner his detention is in violation of the constitutional right to equal protection of the laws guaranteed by the Fourteenth Amendment. We do not argue that a State must provide an appeal in criminal cases.[20] Our position is much narrower: If a State grants defendants convicted of felony an appeal to its Supreme Court "as a matter of right" [KAN. GEN. STAT. (Corrick, 1935) Sec. 62-1701], the equal protection clause of the Fourteenth Amendment precludes it from forcibly preventing one individual from exercising that right.[21]

Although this precise question has never, to our knowledge, been passed upon by this Court, neither elaborate argument nor cumulative marshaling of decisions is necessary for its resolution. No matter how narrow a historical reading is given the context, "equal protection of the laws" must mean that in both legislative provision and administration the statutory scheme for determining and meting out penal punishment must operate equally under like circumstances.[22] As early stated by this Court in

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[20] Due process does not so require. *McKane* v. *Durston*, 153 U. S. 684, 687; *Andrews* v. *Swartz*, 156 U. S. 272, 275; *Murphy* v. *Massachusetts*, 177 U. S. 155, 158; *cf. District of Columbia* v. *Clawans*, 300 U. S. 617, 627.

[21] It is well settled that the guarantees of the Fourteenth Amendment embrace acts of State executive officers. *Ex parte Virginia*, 100 U. S. 339, 347 (1879); *Hebert* v. *Louisiana*, 272 U. S. 312, 316 (1926); *Mooney* v. *Holohan*, 294 U. S. 103, 112-13 (1935); *Brown* v. *Mississippi*, 297 U. S. 278, 287 (1936) (jailer one of the state officials involved); *Smith* v. *O'Grady*, 312 U. S. 329, 334 (1941). In addition, since the statutory grant makes the appeal an integral part of the legal process in the State, the discriminatory denial of it to a single defendant has been termed by some courts a violation of the due process clause. See *infra*, 29.

[22] *Moore* v. *Missouri*, 159 U. S. 673, 677-78 (1895); *Ughbanks* v. *Armstrong*, 208 U. S. 481, 487 (1908); *Graham* v. *West Virginia*, 224 U. S. 616, 630-31 (1912); *Whitney* v. *California*, 274 U. S. 357, 369 (1927).

Barbier v. *Connolly*, 113 U. S. 27, 31 (1885), the constitutional requirement is

> "that all persons * * * should have like access to the courts of the country for the protection of their persons * * *"

Discrimination in affording an opportunity to a particular defendant to appeal to a higher court for the correction of serious errors in the trial court, does not meet this requirement.

Discrimination in fact must be shown.[23] But this does not mean one who proves that he was in fact deprived of his statutory rights must demonstrate that others were at the same time given what the State statute says they were to have. Absent any proof to the contrary, the customary presumptions that the laws of the State are properly administered will prevail.[24] In any event, the fact that in the years 1933 to 1935, the statutory right to appeal from a conviction for felony was not generally foreclosed in the State of Kansas, can be judicially noticed.[25] *Cf. Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337 (1938). It is true that there may be basis in the present record (R. 62) for the belief that prisoners in the State penitentiary as a group were barred from prosecuting appeals if they were unlucky enough to be without friends or counsel to do so for them. But there can be no serious contention

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[23] *Carter* v. *Texas*, 177 U. S. 442, 447-48 (1900); *Tarrance* v. *Florida*, 188 U. S. 519, 520 (1903); *Howard* v. *Kentucky*, 200 U. S. 164, 176 (1906); *Hysler* v. *Florida*, No. 64, October Term, 1941, p. 8.

[24] *Bush* v. *Kentucky*, 107 U. S. 110 (1882); *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 190 (1932); *Cf. United States* v. *Chemical Foundation*, 272 U. S. 1 (1926). That petitioner was particularly singled out for restrictive treatment cannot be denied on the present record. See *supra*, pp. 7, 20.

[25] From the beginning of the July Term, 1933, to the end of the July Term, 1935, the Kansas Supreme Court delivered opinions in fifty-three criminal appeals. See 138-42, Kansas Reports, *passim*.

that discrimination is absent where the availability of statutory rights of appeal is made dependent upon the prisoner's ability to furnish bail or his possession of relatives or friends outside the jail walls. See *Boykin* v. *Huff*, 121 F. (2d) 865, 870 (App. D. C. 1941).

It likewise seems unnecessary to seek to fit the discrimination here alleged precisely into any of the categories recognized in the cases. Whether their discriminatory acts be deemed "invidious", *Soon Hing* v. *Crowley*, 113 U. S. 703, 708 (1885), or "unjust and illegal", *Yick Wo* v. *Hopkins*, 118 U. S. 356, 374 (1886), or "intentional and arbitrary", *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 352 (1918), the confiscation of petitioner's appeal documents by the State officials deprived him of substantial rights.[26] While it is clear that the errors alleged by petitioner were sufficient to have required reversal of the original conviction—two of them involving the constitutional validity of the commitment, *infra*, pp. 36-53, we submit that whether the appeal would have been successful is immaterial. Petitioner was by state statute afforded an appeal as "of right". *Cf. Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337, 348-50 (1938); *Mitchell* v. *United States*, 313 U. S. 80, 94 (1941). Its merits were to be considered by an appellate court, not by the prison or pardon officials. *Ex parte Hull*, 312 U. S. 546, 549 (1941). Forcibly

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[26] Indeed, the alleged acts of Wardens Graham, Stubblefield, and the State Parole Attorney were not only deliberate and intentional, but they were even "systematic" within the requirements suggested in the tax cases. *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20 (1907); *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 352 (1918); *Chicago G. W. Ry.* v. *Kendall*, 266 U. S. 94, 98 (1924); *Cumberland Coal Co.* v. *Board*, 284 U. S. 23, 28 (1931); *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U. S. 239, 245 (1931). The confiscations and refusals to forward court documents were continuous (R. 10, 17-18, 67) and prison officials warned outsiders not to take out papers belonging to petitioner (R. 17). These acts probably were also in violation of the Federal Civil Rights Act. Rev. Stat. Secs. 1977, 1980, 8 U. S. C. A. §§ 41, 47 (3).

preventing him from exhausting it, irrespective of its merits, was a denial to him of the equal protection of the laws. *Cf.* Note (1942) 42 COL. L. REV. 271, 277.

While this point has not been before this Court, it has been judicially considered. In *Bogkin* v. *Huff*, 121 F. (2d) 865 (1941), the Court of Appeals for the District of Columbia clearly enunciated the constitutional rule applicable. Here the defendant, after a trial in which he had been represented by counsel appointed by the court, wrote to the trial judge that he wanted to appeal and asked that counsel be appointed for this purpose. The trial judge concluded, after a conference with the Assistant District Attorney and counsel who had represented the defendant at the trial, that "the possibility of obtaining a reversal in your case is remote" (121 F. (2d) at 869); he refused to assign counsel to take an appeal and suggested to the defendant that "it will be necessary for you to employ private counsel." Believing from this correspondence that no appeal could be had without counsel, the defendant failed to appeal *pro se* within the specified time. Later he applied for habeas corpus on the ground that he had been unconstitutionally discriminated against by the practical denial of his right to appeal. The Court of Appeals determined that the petitioner's original letter sufficed as a filing of the appeal and ordered the record of the trial to be brought before it for consideration on appeal.

In doing so the court found it unnecessary to decide whether if appeal was foreclosed and no other remedy available, the petitioner was entitled to be discharged. It stated that this claim

> "would be entitled to serious consideration if the consequences of the court's mistake could be remedied in no other way. While due process under the Fifth Amendment, as under the Fourteenth, does not require appellate review, nevertheless when Congress

creates that right it is not free from all constitutional restrictions, including the obligation not to make unreasonable discriminations.

The assumption has been widespread that Congress has absolute power to grant or withhold appeals in forma pauperis. No doubt there is wide latitude for determining how far the Government may be required to bear the costs of civil litigation. It may be assumed also that there is room for some discretion concerning the costs of defense in criminal matters. But when the life or the liberty of the citizen is at stake on a serious criminal charge, and appeals are given as a matter of right to those who are able to pay for them, it may be doubted (though as to this we express no opinion) whether they can be withheld from indigent persons solely on the ground of their poverty or otherwise than so as to give them substantially equal protection with more fortunate citizens. The right of appeal, though statutory, is not insubstantial, and its statutory origin does not make it a matter of such small consequence that it may be given or withheld arbitrarily." [121 F. (2d) 872.] [27]

In *State* v. *Guerringer*, 265 Mo. 408, 178 S. W. 65 (1915), the return of the verdict on the last day of the term left the defendant with only fifteen minutes to file the motion for a new trial during the term. The defendant waited until the following term to make his motion. The trial judge overruled it and defendant saved exceptions. Under a statute then in force a motion for a new trial had to be filed during the term or it could not be considered on appeal. If the motion and defendant's exceptions to its denial were out of the case, the defendant would have been deprived of an appellate review of his conviction. The Missouri Supreme Court reversed and remanded for a new trial be-

[27] It should be noted the question whether the appeal was meritorious did not enter into the question whether a discriminatory denial of the right of appeal would result in a violation of the Fifth Amendment.

cause the defendant, under the circumstances, had been deprived of his right to appeal. The opinion clearly recognized that the circumstances had caused a discriminatory denial of the right to appeal and that this violated a constitutionally guaranteed right.

> "If he had no opportunity to file a motion for a new trial, as we must concede he did not have, but notwithstanding this his life be taken, it will have been taken without due process of law. For while the right of appeal is not essential to due process of law (Reetz *v.* Michigan, 188 U. S. l. c. 508), yet if an appeal be allowed to some persons and not to all persons similarly situated, such deprivation of the right to an appeal is equivalent to the denial of due process of law, for due process of law and the equal protection of the laws are secured only when 'the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government' [Duncan *v.* Missouri, 152 U. S. l. c. 382]." 262 Mo. at 416-17, 178 S. W. at 67.

We submit, therefore, that where the State thus discriminatorily deprives a defendant of a statutory right of appeal there is a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment.

In addition, a number of State and Federal Courts have considered the arbitrary deprivation of a right to appeal otherwise afforded, under the due process clause of the Fifth Amendment and of State constitutions. These courts have invariably termed such interference or denial of the right a denial of due process. See *Boykin* v. *Huff*, 121 F. (2d) 865 (1941); *Jones* v. *Commonwealth*, 269 Ky. 779, 785, 108 S. W. (2d) 816, 819 (1937); *Life & Casualty Ins. Co.* v. *Womack*, 228 Ala. 70, 71, 151 So. 880, 881 (1933); *State* v. *Guerringer*, 265 Mo. 408, 416-17, 178 S. W. 65, 67 (1915).

But whether they approached the problem in terms of due process of law or denial of equal protection of the law,

all courts which have considered the question have readily and necessarily concluded that forcible denial of an appeal which by statute is accorded "as a matter of right" is a denial of constitutional right.

C. *The Denial of Equal Protection Through Suppression of Petitioner's Appeal Beyond the Time Within Which Appeal Could Be Had, Rendered the Commitment Constitutionally Void.*

We have shown that the discriminatory and arbitrary suppression of the petitioner's appeal was a violation of the equal protection clause of the Fourteenth Amendment. This poses the problem as to what effect such denial of constitutional right has upon the validity of his detention. Where violation of a constitutional guarantee occurs during the course of trial and is claimed on appeal, remand for a new trial affords adequate protection. *Powell* v. *Alabama*, 287 U. S. 45 (1932); *Norris* v. *Alabama*, 294 U. S. 587 (1935). But where the time for appeal has expired, and the constitutional defect is disclosed in subsequent habeas corpus proceedings, the commitment is deemed void and the prisoner ordered released. *Cf. Smith* v. *O'Grady*, 312 U. S. 329 (1941); *Johnson* v. *Zerbst*, 304 U. S. 458 (1939). In such cases the State may elect to retry the petitioner and since the original trial was constitutionally void there is no double jeopardy.

In the present case it may be urged that the Constitutional defect being in the denial of appeal, it can be remedied by affording to petitioner at this time the appeal to which he was entitled. *Cf. Lee* v. *Prather*, 146 Kan. 513, 516, 71 P. (2d) 868, 870 (1937); *Boykin* v. *Huff*, *supra*. Thus it might be argued that the State court need merely order the transcript of the trial court before it or permit a bill of

exceptions to be filed and review those errors of State and Federal constitutional law [28] which petitioner charges were made.

We submit that this does not suffice and that the result of this deprivation of constitutional right was to render void the commitment under which respondent detains the petitioner. Irrespective of whether the asserted errors of State law in his original trial would have sufficed to cause reversal, petitioner was constitutionally entitled not to be prevented from having them reviewed within the period allowed for appeal. That right cannot be restored to him, and he has been unlawfully imprisoned through seven years of its denial. Compare this Court's rejection of the argument that a tax constitutionally void because of systematic discrimination might be validated by subsequent equalization. *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U. S. 239, 247 (1931).

Nor will having this result flow from this type of invasion of constitutional right in any way interfere with the effective administration of the criminal laws. If unconstitutional denial of an appeal by discriminatory and arbitrary acts of State officials continued beyond the time for appeal renders a commitment void, the duration of the denial beyond the controlling date will automatically safeguard the interests of both State and accused. If only a short period elapses between the expiration of the time for appeal and habeas corpus, the State is in a relatively better position to prosecute the new trial. If, as here, a very long period elapses, any burden on the State is offset by the

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[28] Insofar as the other asserted Federal constitutional defects in the original trial are concerned, infra, Points II and III, the denial of the appeal was an aggravating circumstance. These questions could of course have been raised in the original appeal. They are also clearly presented in the present case as independent grounds.

length of the unlawful detention.[29] Moreover, the entire matter is in the hands of State prison officials whose rules and acts should never preclude those in their custody who are impecunious from having the same access to the courts for purposes of appeal as others subject to the same State laws.

Although the question is new, there is nothing novel in our contention that denial of a constitutional guarantee renders a commitment void. This Court has announced on repeated occasions that no man shall be kept in prison if his confinement was secured without due regard for the fundamental decencies protected by the Fourteenth Amendment. No State may, while the Constitution endures, deprive any person of liberty by a trial which is dominated by a mob,[30] by a conviction secured by confessions improperly obtained from the accused by physical torture or by persistent pressure of the type commonly known as "The Third Degree",[31] or by a judgment based upon a plea of guilty because of the deception of State officers.[32] Nor may it obtain a conviction through the use of testimony known to the prosecuting authorities to be perjured.[33] The State

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[29] *Cf. Commonwealth ex rel. Schultz* v. *Smith*, 139 Pa. Super. 357, 369, 11 A. (2d) 656, 662 (1940) where the relator was discharged after nine years' imprisonment. The Pennsylvania court admitted that if there had been a brief imprisonment, relator would have been remanded for a new trial. It stated, "In this case, however, the relator has served nearly nine years' imprisonment, a very substantial part of the sentence imposed upon him. To try him again at this time, after this lapse of years, would probably be most unfair."

[30] *Moore* v. *Dempsey*, 261 U. S. 86, 91 (1923); see *Frank* v. *Mangum*, 237 U. S. 309, 335 (1915).

[31] *Brown* v. *Mississippi*, 297 U. S. 278, 286 (1936); *Chambers* v. *Florida*, 309 U. S. 227, 235 (1940); *cf. Lisenba* v. *California*, Nos. 4, 5, October Term, 1941, decided December 8, 1941.

[32] *Smith* v. *O'Grady*, 312 U. S. 329, 334 (1941).

[33] *Mooney* v. *Holohan*, 294 U. S. 103 (1935); *Hysler* v. *Florida*, No. 64, October Term, 1941, decided March 2, 1942, Pamphlet, p. 1.

must afford the accused the aid of counsel, at least in capital cases.[34]

No conviction which falls short of these requirements may stand. A judgment constitutionally defective is open to both direct and collateral attack even though the State court had jurisdiction at the opening of the trial. "That a State court before which a proceeding is competently initiated may—by operation of supreme Federal law—lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our Federal system." *Kalb* v. *Feuerstein*, 308 U. S. 433, 440, n. 12 (1940). See also *Frank* v. *Mangum*, 237 U. S. 309, 327 (1915); *Moore* v. *Dempsey*, 261 U. S. 86, 92 (1923); *Smith* v. *O'Grady*, 312 U. S. 329, 334 (1941); *cf. Johnson* v. *Zerbst*, 304 U. S. 458, 468 (1938).[35]

In the case at bar the operative facts resulting in the denial of the constitutional guarantees of equal protection and due process occurred *after* the trial and caused a loss of the timely review in the appellate court to which petitioner was entitled. We submit that neither the time of the constitutional deprivation nor the fact that it has its impact on the appellate rather than the trial court is of any consequence. We have already noted the opinions of other courts recognizing that denial of a right to appeal afforded others, may be sufficient to render a judgment of conviction constitutionally void. *Boykin* v. *Huff*, *supra*; *State* v. *Guerringer*, *supra*. And the opinions of this Court likewise make

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[34] *Powell* v. *Alabama*, 287 U. S. 45, 65, 71 (1932); *Avery* v. *Alabama*, 308 U. S. 444, 445 (1940).

[35] We shall demonstrate below; *infra*, Points II-III, that the petitioner alleges that he was denied constitutional rights in the course of the trial which, under the rationale of the decisions cited, deprived the trial court of jurisdiction to pronounce a valid judgment, and that these allegations were not directly denied by respondent nor probably considered by the lower court. *Infra*, pp. 36-53. At this point we consider only the effect of the acts of the prison wardens and other officials, *after* the judgment of conviction, which resulted in petitioner being unconstitutionally deprived of his appeal.

it clear that for purposes of inquiry into constitutional validity, there should be no segregation between the trial and appellate portions of judicial action.

In *Frank* v. *Mangum, supra,* an appeal from the refusal of a Federal district court to award a writ of habeas corpus to a petitioner claiming imprisonment by the State of Georgia in violation of the Fourteenth Amendment, the Court recognized that jurisdiction may be "lost in the course of the proceedings" (237 U. S. at 327). But "the course of proceedings" is not restricted to the trial alone. Issues arising under the Fourteenth Amendment must be determined by considering the entire process of commitment. For, accurately speaking, they concern the power and authority of the State itself to detain a prisoner. In the words of the Court:

> "But it would be clearly erroneous to confine the inquiry to the proceedings of the trial court. The laws of the State of Georgia (as will appear from decisions elsewhere cited), provide for an appeal in criminal cases to the Supreme Court of that State upon divers grounds, including such as those upon which it is here asserted that the trial court was lacking in jurisdiction. And while the Fourteenth Amendment does not require that a State shall provide for an appellate review in criminal cases (*McKane* v. *Durston,* 153 U. S. 684, 687; *Andrews* v. *Swartz,* 156 U. S. 272, 275; *Rogers* v. *Peck,* 199 U. S. 425, 435; *Reetz* v. *Michigan,* 188 U. S. 505, 508), it is perfectly obvious that where such an appeal is provided for, and the prisoner has had the benefit of it, the proceedings in the appellate tribunal are to be regarded as a part of the process of law under which he is held in custody by the State, and to be considered in determining any question of alleged deprivation of his life or liberty contrary to the Fourteenth Amendment.
>
> "*In fact, such questions as are here presented under the due process clause of the Fourteenth Amendment, though sometimes discussed as if involving merely the*

jurisdiction of some court or other tribunal, in a larger and more accurate sense involve the power and authority of the State itself. The prohibition is addressed to the State; if it be violated, it makes no difference in a court of the United States by what agency of the State this is done; so if a violation be threatened by one agency of the State but prevented by another agency of higher authority, there is no violation by the State. It is for the State to determine what courts or other tribunals shall be established for the trial of offenses against its criminal laws, and to define their several jurisdictions and authority as between themselves. And the question whether a State is depriving a prisoner of his liberty without due process of law, where the offense for which he is prosecuted is based upon a law that does no violence to the Federal Constitution, cannot ordinarily be determined, with fairness to the State, until the conclusion of the course of justice in its courts." (237 U. S. at 327, 328). (Italics supplied.)

Thus, we believe it is of no significance whether the infringement of a constitutional right occurs before, during or after the trial court has received the verdict and pronounced sentence. The redress of violation of constitutional rights cannot depend upon the timing of the invasion. The prosecuting attorney, the court, the jailers are all part of the administration of the criminal laws of the State. If the acts of police officers, prosecuting authorities and judges [36] may constitute invasions of constitutional rights which render the judgment of commitment subject to successful attack in habeas corpus proceedings, no reason except formalism exists for refusing to give the same effect to the official action of prison wardens after sentence is pronounced. The proceedings which must be considered

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[36] *Smith* v. *O'Grady*, 312 U. S. 329 (1941); *Mooney* v. *Holohan*, 294 U. S. 103 (1935); *Johnson* v. *Zerbst*, 304 U. S. 458 (1938); *cf. Hysler* v. *Florida*, No. 64, October Term, 1941, decided March 2, 1942.

include those in the appellate tribunal. *Frank* v. *Mangum*, *supra* at 327. See also *Filer* v. *Steele*, 228 Fed. 242 (W. D. Pa. 1915), *aff'd per curiam*, 241 U. S. 648 (1916); *United States* v. *Mills*, 21 F. Supp. 616, 618 (E. D. Pa. 1937); *Ex parte Stonefield*, 36 F. Supp. 453, 455 (W. D. Ky. 1941), *aff'd sub nom. Stonefield* v. *Buchanan*, 124 F. (2d) 23 (C. C. A. 6, 1941). By the same token, the court must scrutinize interferences of State officers which preclude a defendant from pursuing an appeal until the time for doing so has expired. *Cf. Boykin* v. *Huff*, 121 F. (2d) 865 (App. D. C. 1941). And forcible prevention of an appeal, which we have shown to be an unconstitutional discrimination, must relate back [37] to undermine the judgment under which the prisoner is held and to render it invalid. *Cf. Jones* v. *Commonwealth*, 97 F. (2d) 335 (C. C. A. 6, 1938); *Bridwell* v. *Aderhold*, 13 F. Supp. 253, 255-56 (N. D. Ga. 1935); *aff'd*, 92 F. (2d) 748 (C. C. A. 5, 1937), *rev'd on other grounds sub nom. Johnson* v. *Zerbst*, 304 U. S. 458, 468 (1938).

II.

The Alleged Denial of Compulsory Process Was a Violation of the Due Process Clause of the Fourteenth Amendment.

A. *Petitioner's Allegations That He Was Denied the Use of Compulsory Process Were Not Controverted By Respondent.*

The second Federal question presented is based upon the allegations in petitioner's application that he was in effect

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[37] The particular formula employed seems unimportant: An unconstitutional interference with the right to appeal must render the commitment void. This follows either because the constitutional invasion relates back to deprive the committing court of jurisdiction *ab initio*, or because the judgment cannot be regarded as constitutionally final until the time for appeal has passed and any unconstitutional interference with the timely right to appeal prevents it from becoming valid.

denied the use of compulsory process to secure witnesses in his defense. Supplementing the general allegation in his application that he had been denied due process of law (R. 3-4), petitioner in his accompanying verified Statement of Facts alleged that on April 27, 1933, more than two weeks before his trial, he asked that certain witnesses be subpoenaed. These included the truck driver whom he employed and who had accepted the alleged forged check; the cashier who had received it in her daily receipts; and four other witnesses who could testify as to his innocence (R. 7-8). He alleged that the names of these witnesses were excluded from the list of those to be subpoenaed and that they were not present, and further that he had renewed this request at the trial (R. 8). These allegations were repeated in the abstract which petitioner filed as appellant (R. 23-24), and in his brief in the court below (R. 32). None of them was denied in respondent's return (R. 37), or abstract (R. 38-39). Moreover, while the county attorney, in his affidavit accompanying the Return (R. 49-50) specifically denied various allegations concerning the conduct of the trial, he nowhere considers or denies those detailing the refusal to subpoena defendant's witnesses.

Thus there was presented the issue of fact whether petitioner had been denied compulsory process to secure witnesses for his defense and the issue of law as to whether this denial constituted a denial of due process affecting the validity of his commitment. It is not altogether clear how the court below disposed of either of these questions. In summarizing the allegations of the application it made no mention of this specific claim that the use of compulsory process had been denied (R. 60-61). And in its opinion it simply stated:

> "There is nothing in the record of the proceedings in the court below to indicate any irregularity in the petitioner's trial and conviction, and certainly nothing

to indicate that his commitment was void for any reason" (R. 62).

Whether on the question of compulsory process it refused to believe petitioner's uncontroverted and specific allegations or, accepting them, determined that they were legally immaterial, cannot be clearly determined.

If the court below decided the issue of fact against petitioner, its decision cannot stand. Petitioner's allegations are clear and specific. His application sets forth the date of his requests (R. 7-8), the names of the witnesses he asked to have subpoenaed (R. 7-8), and the fact that "these material witnesses were excluded from the list to be subpoenaed and were not present" (R. 8). In the absence of contradiction, a finding (if the opinion below is so to be interpreted) that petitioner was not deprived of his right to compulsory process for witnesses cannot stand.

It has already been noted that, despite petitioner's request, the transcript of the trial court was never produced (R. 16). And though the court below asserted that it entertained "this case only because of plaintiff's allegations respecting the records in the trial court" (R. 62-63), its conclusion that "the records of courts are not set aside upon the unsupported statements of a defeated litigant" must rest on the journal entries which alone were before it. Obviously, the alleged deletion of names of witnesses petitioner needed for his defense would not be revealed in the formal journal entries of the trial (*cf.* R. 44).

If, on the other hand, the court below accepted petitioner's allegations on this point, we contend that the failure to afford him the use of compulsory process to secure witnesses in his defense was a violation of the due process clause of the Fourteenth Amendment.[38] To this we now turn.

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[38] In this same connection we call attention to the fact that the right to compulsory process for witnesses is specifically guaranteed by Section 10

B. *The Due Process Clause of The Fourteenth Amendment Requires That A Defendant In A Felony Prosecution Be Afforded Compulsory Process to Secure Necessary Witnesses.*

It may be taken as settled that the specific recital of a constitutional protection against Federal action in one of the first ten amendments other than the Fifth, does not preclude the same protection from being embraced in the due process clause of the Fourteenth Amendment as against State action. *Powell* v. *Alabama*, 287 U. S. 45, 65-68 (1932); *Palko* v. *Connecticut*, 302 U. S. 319, 324-45 (1937). We, therefore, begin by observing that the Sixth Amendment—the detailed charter of procedural due process in Federal criminal cases—specifically prescribes that

> "In all criminal prosecutions, the accused shall enjoy the right * * * to have compulsory process for obtaining Witnesses in his favor."[39]

We contend that in criminal prosecutions by a State the due process clause of the Fourteenth Amendment embodies the same constitutional requirement.

Pursuing the conventional approach, *Twining* v. *New Jersey*, 211 U. S. 78 (1908); *Powell* v. *Alabama*, *supra*, we

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of the Kansas State Constitution, Appendix A, *infra* p. 56, and that this guarantee is fully implemented by statute. KAN. GEN. STAT. (Corrick, 1935) Secs. 62-1309-12, Appendix A, *infra* pp. 56-57. See *State* v. *Roark*, 23 Kan. 147 (1879). Indeed, under the laws of Kansas the prior tender of witness fees is not necessary. See KAN. GEN. STAT. (Corrick, 1935) Sec. 62-1312. *Cf.* 8 WIGMORE, EVIDENCE (3d ed. 1940) Sec. 2191. Once again indulging the presumption that the statutes are otherwise regularly enforced, *supra*, p. 25, petitioner's allegations would also support the contention that he was also denied the equal protection of the laws. We confine ourselves, however, to demonstrating that the facts alleged show a violation of due process.

[39] See, also, 28 U. S. C. A. Secs. 654, 656.

inquire first into the English common law and American colonial practice.

1. *The Right to Compulsory Process Was Regarded As An Essential Requisite Of A Fair Trial In Criminal Cases Prior To The Adoption Of The Federal Constitution.*

In the early English common law, a person charged with treason or felony was denied compulsory process for witnesses even though the use of compulsory process was available to the Crown. See 5 HOLDSWORTH, HISTORY OF ENGLISH LAW (1927) 192. An accused charged with felony was not given the right to compulsory process until the beginning of the Eighteenth Century. 1 Anne, c. 9, Sec. 3 (1702).[40] The English common law rule, however, never gained a foothold in the Colonies. See *Holden* v. *Hardy*, 169 U. S. 366, 386 (1898). Of even greater significance is the appearance in early State constitutions of specific guarantees that defendants in criminal cases could require that witnesses necessary to their defense be subpoenaed.[41] Many of these antedated the Federal Bill of Rights by almost a century.

The Constitution of Maryland declared in 1776 "that, in all criminal prosecutions, every man hath a right * * * to have process for his witnesses; * * *" MARYLAND DECLARATION OF RIGHTS, Art. XIX. The Massachusetts Constitution provided that "every subject shall have a right to produce all proofs that may be favorable to him * * *" MASSACHUSETTS CONST., Part the First, Art. XII (1780). The New Hampshire Constitution had a sub-

[40] This statute, providing that all persons appearing as witnesses on behalf of a prisoner upon trial for a felony were allowed to be sworn, was treated by implication as authorizing compulsory process. See 8 WIGMORE, EVIDENCE (3d ed. 1940) Sec. 2190; 1 STARKIE, EVIDENCE (1824) 86.

[41] These early State constitutions are set forth in AMERICAN CHARTERS, CONSTITUTIONS, AND ORGANIC LAWS (Thorpe ed. 1909).

stantially similar provision. NEW HAMPSHIRE CONST., Part 1, Art. XV (1784). In Vermont somewhat different language was used, that in criminal offenses "a man hath a right * * * to be confronted with the witnesses—to call for evidence in his favor * * *". VERMONT CONST., Ch. I, Sec. X (1777). The Virginia Constitution, adopted in 1776, gave to a person accused of crime the right "to call for evidence in his favor". VIRGINIA CONST., Bill of Rights, Sec. 8 (1776). In New Jersey the unfairness of the early English rule was recognized in the provision "That all criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to." NEW JERSEY CONST., Sec. XVI (1776).

Similarly, in Pennsylvania, as early as 1701, the Penn Charter (Part the First, Article V) declared that "all Criminals shall have the same Privileges of Witnesses and Council as their Prosecutors." Penn's Charter was also applicable in Delaware.[42]

The historical background of the right to compulsory process parallels the historical basis underlying the right

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[42] Following Penn's Charter, the right of an accused to compulsory process for witnesses was granted by statute and by the Constitution of Pennsylvania. DALLAS, LAWS OF PENNSYLVANIA (1700-1781) 134; CONSTITUTION OF PENNSYLVANIA, Article IX, Sec. 9, (1790). The Rhode Island history is not as clear. For while the first constitution, adopted in 1842, expressly granted the right of compulsory process to accused persons, yet in 1798, "An Act Declaratory of Certain Rights of the People of This State", Sec. 6, pp. 80-81, Revised Public Laws, Rhode Island and Providence Plantations, referred to the right of compulsory process as having been in existence prior to 1798.

As early as 1731, South Carolina, by statute, gave to persons accused of crimes the right of compulsory process. Act of August 20, 1731, GRIMKE, SOUTH CAROLINA PUBLIC LAWS (1682-1790) Sec. XLIV, p. 130.

The original Constitution of Connecticut contained the usual guarantee in respect to compulsory process for witnesses, but this Constitution was not adopted until 1818. CONSTITUTION OF CONNECTICUT, Article I, Sec. 9 (1818). However, a statement from Zephaniah Swift's "A System of the Laws of the State of Connecticut", quoted in *Powell* v. *Alabama*, *supra*, at 63, indicates that the right to compulsory process in Connecticut existed prior to the adoption of the Federal Constitution.

to counsel. See *Powell* v. *Alabama*, *supra*, at 61-64. It is also significant that many of the earlier constitutions and statutes couple in a single provision the right to compulsory process with the right to counsel. See Constitutions of Maryland, Vermont, New Jersey and Pennsylvania; the Penn Charter; DALLAS, LAWS OF PENNSYLVANIA, (1700-81) 134; see also U. S. CONSTITUTION, Sixth Amendment. Indeed, in one respect at least it is more persuasive. For while in England accused persons were given the right of compulsory process for witnesses as early as 1702, the aid of counsel was not given until 1836. *Cf. Powell* v. *Alabama*, *supra*, at 60. And while conceivably a defendant might conduct his own defense without the aid of counsel, unless he can successfully secure witnesses he may be deprived of his evidence. *Cf. Hysler* v. *Florida*, No. 64, October Term, 1941, p. 11.

Moreover, if historical analogies have force, the history underlying the right of compulsory process appears to be much stronger than that supporting the right to freedom of speech, *De Jonge* v. *Oregon*, 299 U. S. 353 (1937). Freedom of speech, as a specific guarantee, was created for the first time in this country by the First Amendment to the Constitution. See Warren, *The New "Liberty" Under the Fourteenth Amendment* (1926) 39 HARV. L. REV. 431, 461. In *Palko* v. *Connecticut*, *supra*, at 327, Mr. Justice Cardozo, characterized freedom of speech as "the matrix, the indispensable condition, of nearly every other form of freedom." Since an accused person speaks most effectively through his witnesses, and freedom of speech should not be diminished by addition of the words "in one's own defense", both rights have equal place in the concept of due process.

2. *The Right To Compulsory Process Is A Fundamental Part of Due Process.*

Recognizing that inclusion of a particular protection within the context of due process involves not only acceptance of historical precedent but also recognition of the "social and moral values" of the right asserted, *Palko* v. *Connecticut*, 302 U. S. 319, 326 (1937),[43] we contend further that the necessity for giving to a defendant accused of felony the means of securing witnesses for his defense is part of "that fundamental fairness essential to the very concept of justice." *Lisenba* v. *California*, Nos. 4, 5, October Term, 1941, decided December 8, 1941. Failure to afford compulsory process violates fundamental standards of criminal procedure. See National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement* (1931) Vol. IV, p. 284. That this is so can be shown by examination of what its denial would mean under present-day conditions, by reference to comment by this Court and others, and by the zealous regard which has been given to subpoena rights in other types of cases.

Whatever may have been true in the days of Coke,[44] realistic appraisal of present-day conditions makes it clear that denial of compulsory process would go far to destroy effective presentation of a defense. Apart from a prevalent disinclination to "get mixed up in crime", there are many reasons why subpoena powers must be available to compel the attendance of witnesses in criminal cases. Competitive demands of job and of family; lack of direct in-

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[43] See, *e.g.*, *Hurtado* v. *California*, 110 U. S. 516 (1884); *Maxwell* v. *Dow*, 176 U. S. 581 (1900); *Twining* v. *New Jersey*, 211 U. S. 78 (1908); *Snyder* v. *Massachusetts*, 291 U. S. 97 (1934).

[44] Compare discussion of the common law denial of both counsel and witnesses, in RADIN, ANGLO-AMERICAN LEGAL HISTORY (1936) 229; 2 WIGMORE, EVIDENCE (3d ed. 1940) § 595; 5 HOLDSWORTH, HISTORY OF ENGLISH LAW (1927) 192-93.

terest; unfortunate concepts of respectability; and occasional prejudice—combine to prevent voluntary appearance as a witness in a criminal case. More important is the current movement of people within a State with the result that desire to see justice done is thwarted by the inconvenience and expense of attending a trial. Unless appearance can be compelled, it is likely not to be made.

These reasons were reflected in the comments of this Court in *Holden* v. *Hardy*, 169 U. S. 366, 386 (1898), that the early English practice denying compulsory process in criminal cases was "oppressive", and the later recognition in *Kelley* v. *Oregon*, 273 U. S. 589, 591 (1927), that a defendant should not be "in any way prevented from securing needed witnesses."[45] In like fashion, decisions of the State courts have also recognized the fundamental character of the right to compulsory process. Thus, in *Osborne* v. *People*, 83 Colo. 4, 7, 262 Pac. 892, 893 (1928), the court refers to the old English rule denying compulsory process as an injustice. In *Christie* v. *State*, 94 Fla. 469, 114 So. 450 (1927), the court stated that a fair and impartial trial contemplates compulsory attendance of witnesses. In *Williams* v. *State*, 23 Ala. App. 297, 298-99, 124 So. 402, 403 (1929), the right to compulsory process is referred to as "a substantive right, a real right, and not an illusory sham

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[45] *Ex parte Harding*, 120 U. S. 782 (1887) appears to have turned on the procedural limitations then prevailing for habeas corpus in the Federal courts. See, also, Note, *The Federal Bill of Rights and the Fourteenth Amendment* (1938) 26 GEO. L. J. 439, 459: "While there is little authority directly in point, it is believed that the refusal of a state to allow the accused compulsory process for obtaining witnesses in his favor, where such witnesses could be reached by subpoena, would infringe the due process clause of the Fourteenth Amendment. This result would seem to follow from the Court's repeated statements that a 'hearing' is the *sine qua non* of due process in the administration of justice. A hearing without witnesses in one's defense would certainly be a mockery. It is a well-known fact that many witnesses, unless summoned by order of the court, would not appear, and supply testimony essential to the defense."

to be satisfied by the issue of process, which is to be rendered ineffectual by hastening on to immediate trial." *Cf. Graham* v. *State*, 23 Ala. App. 553, 129 So. 295 (1930). In *Mitchell* v. *Commonwealth*, 225 Ky. 83, 7 S. W. (2d) 823 (1928), an opportunity to secure witnesses was termed an essential part of a fair trial. See also *Jackson* v. *Commonwealth*, 215 Ky. 800, 287 S. W. 17 (1926); *State* v. *Roark*, 23 Kan. 147 (1879).

Finally we call to the attention of the court the developing view that in hearings before administrative agencies those whose rights are being determined should be afforded a right to compulsory process for witnesses at least equal to that given to the agency. *Inland Steel Company* v. *National Labor Relations Board*, 109 F. (2d) 9 (C. C. A. 7th, 1940); *National Labor Relations Board* v. *Ed. Friedrich, Inc.*, 116 F. (2d) 888 (C. C. A. 5th, 1941); *Bethlehem Steel Company* v. *National Labor Relations Board*, 120 F. (2d) 641 (App. D. C., 1941). In the *Inland Steel* case an order of the Board was set aside for lack of a fair hearing in that restrictions were placed upon the issuance of subpoenas for the company's witnesses which were not applied to those issued for the Board. The Court of Appeals for the Seventh Circuit relied upon "the unfairness of the procedure employed" and stated that the inquiry to be made was "whether it [the company] was, by such procedure, deprived of a substantial right." 109 F. (2d) at 19-20. Dissenting in the *Bethlehem* case, Judge Stephens said:

> "the right of every citizen in both civil and criminal cases to have compulsory process for the attendance of witnesses is an essential feature of the Anglo-American system. 8 Wigmore, Evidence (3d — ed., 1940) §§ 2190-1. The Sixth Amendment to the Constitution expressly preserves that right in criminal cases * * * There is no more elementary proposition in Anglo-American law than that the Government

> itself in its prosecution in its own tribunals of cases against the citizen shall be on terms of equality with the citizen before the law; and this applies not only to substantive but also to procedural rules." 120 F. (2d) at 660.

See, also, Note, *Subpoenas and Due Process in Administrative Hearings* (1940) 53 HARV. L. REV. 842, 846.

For these reasons we submit that the due process clause of the Fourteenth Amendment embraces the requirement of compulsory process both as a matter of historical precedent and because of its fundamental importance as a necessary part of a fair trial. For reasons already discussed, the denial of due process renders the commitment void. *Smith* v. *O'Grady*, 312 U. S. 329 (1941). See also, *supra*, pp. 30-36.

III.

The Alleged Denial of Petitioner's Right to Testify in His Own Defense Was a Violation of the Due Process Clause of the Fourteenth Amendment.

A. *Petitioner's Allegations That He Was Denied the Right To Take the Witness Stand in His Own Defense Were Not Directly Denied by Respondent or Properly Considered by the Court Below.*

The third Federal question presented is based upon the allegations in petitioner's application that he was prohibited from testifying in his own behalf. Supplementing the general claim in his application that he had been denied due process of law (R. 3-4), petitioner in his accompanying verified Statement of Facts alleged that in his original trial, after the State had put in its case

> "your petitioner ask to take the stand in his own behalf, this was met with rigid opposition and denial. The petitioner was severely reprimanded when he

ask for his rights, a disturbance issued, the court 'old your petitioner to set down, the defense rested its ca. e." (R. 9).

This charge was repeated in the Abstract filed by petitioner in the court below (R. 26). Inasmuch as the only persons involved were petitioner himself and the trial judge, it is submitted that these allegations are sufficiently specific. They indicate the place, the time, and the persons involved in the refusal. Once again we find that the respondent neither in his return nor in his brief in the court below paid any attention to these charges. The accompanying affidavit by the County Attorney, however, specifically stated that the "allegations relative to the misconduct on the part of the Honorable Wendell Ready, Judge of the District Court of Sumner County, Kansas, are untrue" (R. 50). To this respondent replied in his Answer, which may be taken as a traverse, that his allegations were true and could be proved (R. 56-57). And as part of his original application for habeas corpus, petitioner had attached a motion for an order directing the trial court which had committed him to send to the Supreme Court "all records, documents, *transcripts* and entries" (R. 16). If, as we contend, this question of fact as to whether petitioner had been denied the right to take the stand in his own behalf controls the constitutional validity of the commitment, a determination whether petitioner's allegations were well founded could readily have been made by an examination of the transcript of his trial. So far as can be determined the court below gave no consideration to the Federal right thus asserted. Failure to do so was tantamount to denying petitioner a hearing on the question. If the facts alleged are determinative of the constitutional validity of the commitment, this alone warrants remand.

We turn then, to the question whether denying to a defendant in a criminal prosecution for a felony the oppor-

tunity to testify in his own defense, where he asks to do so, constitutes a violation of the constitutional guarantee of due process.

B. *The Right of a Defendant Accused of Felony to Testify In His Own Defense Is Now Guaranteed by the Due Process Clause of the Fourteenth Amendment.*

So far as we know this Court has never determined whether refusing to permit a defendant charged with commission of a felony who asks to testify in his own behalf to do so is in violation of the fundamental right to "an opportunity to defend", *Snyder* v. *Massachusetts*, 291 U. S. 97, 122, and "a fair hearing". *Id.* at 127, 130. While it has been said that the "right to be heard by himself and counsel" is substantially "embodied in the Sixth Amendment", *Diaz* v. *United States*, 223 U. S. 442, 455, the precise question here presented appears not to have been considered.

We submit that the undefined boundaries of procedural due process do not foreclose this protection. The historical background may at first glance appear to negative this contention; but when carefully analyzed it lends support. It is true that the right of a defendant to take the witness stand in his defense did not exist either at common law or in this country prior to adoption of the Federal Constitution. On the contrary up to 1864 in no State was an accused person even deemed competent to testify in his own behalf.[46] But this disqualification was for the *protection* of the accused.

> "That the formal grant of competency, then, was so long withheld was due rather to a hesitation founded

[46] The history of the statutory abolition of the disqualification of an accused person to testify for himself is fully set forth in 2 WIGMORE, EVIDENCE (3d ed. 1940) § 579. In England the disqualification was not fully removed until 1898. 61 & 62 VICT. c. 36.

on the supposed advantage of the accused himself. His failure to use the right of testifying would (it was believed) damage his cause more seriously than if he were able to claim that his silence was enforced by law. But, chiefly, his exercise of the right to testify would (it was believed), in subjecting him to the ordeal of cross-examination, place him in a situation in which even an innocent man would show at a disadvantage, and would injure more than assist his own cause." 2 WIGMORE, EVIDENCE (3d ed. 1940) § 579.

Indeed, it was even suggested that the abolition of the disqualification would so seriously prejudice defendants in criminal cases that such statutory reform was in itself unconstitutional. Maury, *Validity of Statutes Authorizing the Accused to Testify* (1880) 14 AM. L. REV. 753.

Nevertheless, at the present time with a single exception the statutes of every State permit the defendant in a criminal case to testify in his behalf.[47] And in Kansas the statute explicitly provides that "No person shall be rendered incompetent to testify in criminal causes * * * by reason of his being the person on trial. * * *" *Kan. Gen. Stat.* (Corrick, 1935) § 62-1420; see *State* v. *Owen*, 124 Kan. 533, 261 Pac. 600 (1927). With the removal of the disqualification, new problems arose: If an accused was free to testify, could his failure to testify warrant an inference of guilt and be made the subject of comment by court or prosecution? Within the freedom permitted by *Twining* v. *New Jersey*, 211 U. S. 78 (1908), the States have answered this

[47] The statutes are collected in 2 WIGMORE, *supra*, § 488. In Georgia no criminal defendant is "competent or compellable to give evidence for or against himself" but has "the right to make to the court and jury such statement in the case as he may deem proper in his defense. It shall not be under oath, and shall have such force only as the jury may think right to give it. They may believe it in preference to the sworn testimony in the case" but the defendant cannot be cross-examined. GA. CODE ANN., 1933, §§ 38-416, 38-415. The form of this single surviving disqualifying statute illustrates the theory that making the defendant incompetent was for his own protection.

question either by express statutory prohibition of inference and comment,[48] or by statute or decision permitting such comment. See (1936) 50 HARV. L. REV. 356. While at the present time there are only a few States in which an inference is properly permitted to be drawn against a defendant who prefers to remain silent, the number is gradually being enlarged.[49]

But apart from the question whether permitted comment on the *failure* to testify results in compulsory self-incrimination or whether any attempt to erase the inference by instruction is psychologically futile, *Bruno* v. *United States*, 308 U. S. 287, 293-94, we submit that whether the States have prohibited comment on a defendant's failure to take the stand or have expressly sanctioned it, there is in either case complete recognition that the failure of a defendant to do so is regarded as tremendously significant. Otherwise the efforts to prevent or to utilize the adverse inference would be meaningless. No matter how resolved, the agitation on this question is likewise recognition of the fact that

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[48] The statutes are collected in 8 WIGMORE, *supra*, § 2272. In Kansas a statute going back to 1871 specifies that the failure of an accused to testify "shall not be construed to affect his innocence or guilt," KAN. GEN. STAT. (Corrick, 1935) § 62-1421, but this provision appears to have been eroded by decision. In *State* v. *Owen*, 124 Kan. 533, 261 Pac. 600 (1927) a question by the prosecuting attorney whether the members of the jury would remain content not to testify if they were on trial, was held to be not a reversible error despite the statute. Earlier Kansas decisions had begun the process. *State* v. *Rambo*, 69 Kan. 777, 77 Pac. 563 (1904), set aside a verdict because the jury had drawn an inference from defendant's failure to testify. Later decisions tend to restrict its effect. *State* v. *Dreiling*, 95 Kan. 241, 147 Pac. 1108 (1915). *Cf. State* v. *Balch*, 31 Kan. 465, 2 Pac. 609 (1884) with *State* v. *Peterson*, 102 Kan. 900, 171 Pac. 1153 (1918). For a discussion of the Federal rule, see *Bruno* v. *United States*, 308 U. S. 287 (1939).

[49] See 8 WIGMORE, *supra*, § 2272. Recommendations have been made by the American Law Institute and the American Bar Association that a defendant's failure to testify should be a proper subject of comment by the prosecutor. See 9 PROC. AM. L. INST. (1931) 202-18; (1931) 56 A. B. A. REP. 137-59.

—once the protective disqualification has been removed—the right of a defendant, who wants to do so, to testify in his own behalf is important, if not fundamental, to making an adequate defense. For if the silence of the accused is so significant that Constitutional and statutory provision must be made to suppress or dissipate the inevitable inference,[50] preventing testimony by a defendant who desires to testify, and thus to avoid the inference in direct fashion, destroys virtually the keystone of his defense. It is a commonplace among those familiar with the criminal courts that where the defendant does not take the stand, the probability of an acquittal is exceedingly remote.[51] In these circumstances the right to due process must include the right to speak, when one desires, in his own defense.

We do not urge that as a necessary corollary a defendant must be advised that he can take the stand in his own defense. Where a State permits comment on his refusal to do so, this would not be an unreasonable requirement. But where comment is precluded by constitution or statute, advising the defendant in the presence of the jury would defeat the other protection provided. Nevertheless, a clear distinction must be drawn between a *failure* to testify and a *refusal to permit* a defendant to do so when he so requests.

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[50] In *State* v. *Owen, supra,* the Kansas Court remarked: "Of course, if the jurors were awake, they knew as well as counsel did that defendant had not testified, and even a direct reference to it would not have been any information to them * * *." 124 Kan. at 538, 261 Pac. at 602. And in an old Maine case, *State* v. *Cleaves,* 59 Maine 298, 301 (1871), the Court observed that "The silence of the accused—the omission to explain or contradict * * * is a fact * * * which the jury must perceive, and which perceiving they can no more disregard than one can the light of the sun, when shining with full blaze on the open eye."

[51] In recommending the allowance of comment on a *failure* to testify, the Wickersham Commission concluded that "The inference of guilt from silence is so natural, and inevitable that the attempt to suppress it produces an atmosphere of insincerity." National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement,* (1931) Vol. IV, p. 342.

In view of the inevitable result—whether comment is prohibited or permitted—such refusal destroys the fairness of the trial.

Our argument thus comes down to urging that in this instance the historical facts, though inverted in their application, show first, that a zealous regard for defendants and a recognition of the consequences of a failure to testify, as well as a mistaken apprehension as to the possible effect of their showing on cross-examination, led originally to their protection through complete disqualification; and, second, that with the enlightened removal of this disqualification, the situation has become completely reversed so that the right to testify has become essential.[52] Under present conditions denial to an accused of the right to speak in his own defense deprives him of probably the most valuable element in a fair trial.[52] See *People* v. *Rosenzweig*, 135 Misc. 324, 239 N. Y. Supp. 358 (1929); *People* v. *Rakiec*, 260 App. Div. 452, 457, 23 N. Y. S. (2d) 607, 612 (1940). And such denial is aggravated in effect where as in the case at bar there is also a denial of compulsory process.

Thus we submit that where the State, acting through its courts, denies to a criminal defendant who asks to testify the opportunity to speak in his own behalf, there is a denial of what has come to be a fundamental requirement of a fair trial and hence a right protected by the due process clause of the Fourteenth Amendment.[53] There is no logical difference between the protection of freedom of speech in labor disputes [*Carlson* v. *California*, 310 U. S. 106 (1940);

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[52] Even in Georgia where the disqualification survives, it has been seen that not only is the accused given the right to address the jury, without being subjected to cross-examination, but his statement may be accepted to contradict sworn testimony. *Supra* note 47.

[53] Since the Kansas statutes afford the opportunity to all defendants to testify, and it may be presumed that these enactments are otherwise generally given effect, *supra* p. 25, there is also ground for asserting that denial of petitioner's request to testify was likewise a denial of the equal protection of the laws. See *supra* note 38.

Thornhill v. *Alabama*, 310 U. S. 88 (1940); *American Federation of Labor* v. *Swing*, 312 U. S. 321 (1941)], in challenging organized religions [*Cantwell* v. *Connecticut*, 310 U. S. 296 (1940)], in distributing circulars without a permit [*Schneider* v. *New Jersey*, 308 U. S. 147 (1939)] or in criticizing pending judicial proceedings [*Bridges* v. *California*, 86 L. Ed. 149 (1941)] and ensuring that right where the individual's personal liberty is at stake and his opportunity to speak in his own behalf may control the result.

Consequently, if the facts alleged by petitioner can be proved, the denial of an opportunity to testify in his own behalf was a violation of due process and such denial likewise renders void the commitment upon which he is being held. Inasmuch as the court below failed properly to consider this question, though it was squarely in issue, we respectfully urge that for this reason alone the cause should be remanded.

IV.

The Cause Should Be Reversed and Remanded.

Since the application of the court below disclosed facts which, if true, would render the commitment void because of constitutional defects, it is submitted that the cause should be reversed and remanded.

We have demonstrated that on the specific showing made by petitioner, the determination of the court below that petitioner had in fact never attempted to appeal from his original conviction was palpably erroneous and was tantamount to a refusal to consider the facts. If viewed as merely an offer of proof, petitioner's affidavits should suffice for reversal. *Neal* v. *Delaware*, 103 U. S. 370, 395-97 (1880); *Carter* v. *Texas*, 177 U. S. 442, 448 (1900).

There was, however, no direct contradiction of petitioner's specific allegations. Because of the previous confiscation of his documents, he has not attached to his application the originals of the supporting affidavits upon

which he relies to demonstrate that his attempts to appeal were forcibly prevented by State officials. Consequently, we contend that the cause should be remanded and petitioner be permitted to submit his proofs on this question of fact. If his allegations are proved, we submit that he is entitled to his discharge on the ground that the forcible prevention of his appeal beyond the time within which one could be taken, was a denial of constitutional right which renders the commitment void. *Cf. Smith* v. *O'Grady*, 312 U. S. 329 (1941).

On the question of fact whether he was denied compulsory service of process in that the names of the witnesses he asked to be summoned were stricken from the list, he should be afforded an opportunity to establish this fact in an appropriate judicial hearing since here again the alleged facts show a denial of constitutional right sufficient to render the commitment void.

Similarly, on the question of fact whether he asked to testify in his own behalf and was denied an opportunity to do so, he should be permitted to establish this charge. If available, the transcript in the trial court should be produced. If this transcript is not available, petitioner should be permitted to prove his allegations in some other fashion and the State should meet this proof by something more than mere general denial since here again the facts alleged show a denial of constitutional right sufficient to render the commitment void.

Conclusion.

For the foregoing reasons, we respectfully submit that the cause should be reversed and remanded.

Respectfully submitted,

H. Thomas Austern,
Counsel for Petitioner.

March, 1942.

APPENDIX A.

1. Federal Constitution.

The Fourteenth Amendment provides in part as follows:

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Constitution and Statutes of Kansas.

A. *Right of Appeal.*

G. S. 1868, c. 82, sec. 281, Kan. Gen. Stat. (Corrick, 1935) sec. 62-1701:

An appeal to the supreme court may be taken by the defendant, as a matter of right, from any judgment against him; and, upon the appeal, any decision of the court, or intermediate order, made in the progress of the case, may be reviewed.

L. 1915, c. 266, sec. 2, Kan. Gen. Stat. (Corrick, 1935) sec. 62-1702:

The provisions of law relating to the manner of taking and perfecting appeals to the supreme court in civil cases, the making and filing of a transcript of the evidence and what shall be deemed a part of the record shall be applicable and extend to criminal cases except as to the time within which an appeal may be taken and as to the requirements that an appellant give security for costs.

G. S. 1868, c. 82, sec. 284, revised 1923, Kan. Gen. Stat. (Corrick, 1935) sec. 62-1704:

The appeal must be taken within two years after the judgment is rendered.

L. 1909, c. 182, sec. 569, Kan. Gen. Stat. (Corrick, 1935) sec. 60-3306:

Appeals to the supreme court shall be taken by notice filed with the clerk of the trial court, stating that the party

filing the same appeals from the judgment, order or decision complained of to the supreme court, * * *. A copy of such notice must be personally served on all adverse parties whose rights are sought to be affected by the appeal, and who appeared and took part in the trial, or their attorneys of record; * * * and thereupon the appeal shall be deemed to be perfected.

L. 1909, c. 182, sec. 570, Kan. Gen. Stat. (Corrick, 1935) sec. 60-3307:

When the appeal is perfected and proof of service of notice of the appeal * * * is filed with the clerk of the trial court, he shall forthwith make a certified copy of such notice and proof of service * * * and transmit the same to the clerk of the supreme court, together with a certified copy of the journal entry of the judgment or order appealed from; and thereupon, on compliance with the rule of the supreme court with reference to security for costs, the appeal shall be docketed by the clerk of the supreme court.

B. *Compulsory Process.*

Constitution of Kansas, Bill of Rights, Sec. 10:

In all prosecutions, the accused shall be allowed * * * to have compulsory process to compel the attendance of witnesses in his behalf * * *.

G. S. 1868, c. 82, sec. 165, Kan. Gen. Stat. (Corrick, 1935) sec. 62-1309:

All courts of record having criminal jurisdiction, shall have power to compel the attendance of witnesses in criminal cases from any county in the state, to testify either on the part of the state or for the defendant.

G. S. 1868, c. 82, sec. 166, Kan. Gen. Stat. (Corrick, 1935) sec. 62-1310:

Subpenas, and other compulsory process to compel the attendance of witnesses in criminal cases, shall be issued

and served in the same manner, and the disobedience thereof punished the same, as in civil cases; and every delinquent witness shall be liable to the party at whose instance he was summoned, in the same manner and to the same extent as in cases of witnesses summoned in a civil action.

G. S. 1868, c. 82, sec. 167, Kan. Gen. Stat. (Corrick, 1935), sec. 62-1311:

A subpena may be directed to the sheriff of the county in which the witness resides, or may be found; and, in such case, the said sheriff shall make immediate service, and speedy return thereof, by mail to the court from which it is issued, with the time and manner of service endorsed thereon, and the distance, by the most direct route of common travel, from his residence to the place of such service.

G. S. 1868, c. 82, sec. 168, Kan. Gen. Stat. (Corrick, 1935), sec. 62-1312:

It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the state, or on the part of the defendant; but such witness shall be bound to attend, and be liable for his non-attendance, in the same manner as if the fees allowed to witnesses had been duly paid to him.

L. 1909, c. 182, sec. 322, Kan. Gen. Stat. (Corrick, 1935) sec. 60-2806:

The clerks of the several courts and judges of the probate courts shall on application of any person having a cause or any matter pending in the court, issue a subpoena for witnesses, under the seal of the court, inserting all the names required by the applicant in one subpoena, which may be served by the sheriff, coroner, or any constable of the county, or by the party or any other person. When a subpoena is not served by the sheriff, coroner or constable, proof of service shall be shown by affidavit; but no costs of service of the same shall be allowed except when served by an officer.

C. *Right to Testify.*

L. 1871, c. 118, sec. 1, Kan. Gen. Stat. (Corrick, 1935), sec. 62-1420:

No person shall be rendered incompetent to testify in criminal causes * * * by reason of his being the person on trial * * *.

L. 1871, c. 118, sec. 2, Kan. Gen. Stat. (Corrick, 1935), sec. 62-1421:

If the accused shall not avail himself of his right to testify in any case, it shall not be construed to affect his innocence or guilt.

D. *Writ of Habeas Corpus.*

The Kansas Constitution contains the following provisions relating to the writ of habeas corpus:

Sec. 8. (Kansas Bill of Rights) Habeas corpus. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

Article 3, Sec. 3. (Constitution of Kansas). Jurisdiction and terms. The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of the government and such other terms at such places as may be provided by law, and its jurisdiction shall be coextensive with the state.

L. 1909, c. 182, sec. 687, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2201:

Every person restrained of his liberty under any pretense whatever may prosecute a writ of *habeas corpus* to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.

L. 1909, c. 182, sec. 689, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2203:

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

First.—By whom the person in whose behalf the writ is applied for is restrained of his liberty and the place where, naming all the parties, if they are known, or describing them if they are not known.

Second.—The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

Third.—If the restraint be alleged to be illegal, in what the illegality consists.

L. 1909, c. 182, sec. 690, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2204:

Writs of *habeas corpus* may be granted by any court of record in term time, or by a judge of any such court, either in term or vacation; and upon application the writ shall be granted without delay.

L. 1909, c. 182, sec. 696, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2210:

The return must be signed and verified by the person making it, who shall state:

First.—The authority or cause of restraint of the party in his custody.

Second.—If the authority be in writing, he shall return a copy and produce the original on the hearing.

Third.—If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party on the hearing, unless prevented by sickness or infirmity, which must be shown in the return.

L. 1909, c. 182, Sec. 697, Kan. Gen. Stat. (Corrick, 1935) sec. 60-2211:

* * * The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any

new matter in avoidance; the new matter shall be verified, except in case of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

L. 1909, c. 182, sec. 698, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2212:

The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

L. 1909, c. 182, sec. 699, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2213:

No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired, in either of the cases following:

First.—Upon process issued by any court or judge of the United States, or where such court or judge has exclusive jurisdiction.

Second.—Upon any process issued on and final judgment of a court of competent jurisdiction.

Third.—For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt upon proceedings to enforce the remedy of a party is not included in any of the foregoing specifications.

Fourth.—Upon a warrant or commitment issued from the district court or any other court of competent jurisdiction upon an indictment or information.

L. 1909, c. 182, sec. 702, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2216:

The court or judge shall have power to require and compel the attendance of witnesses, and do all other acts necessary to determine the case.

L. 1909, c. 182, sec. 711, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2225:

No deposit or security for costs shall be required of an applicant for a writ of *habeas corpus.*

APPENDIX B.

Supplementary Statement of Facts.

In addition to the record formally certified from the court below, there are other relevant alleged facts to which we advert in our argument. Some of these are stated in the Petition for Certiorari, and others are disclosed in the files in the Clerk's Office in this Court. They concern petitioner's charge that in this very proceeding State officials of Kansas have interfered with petitioner's efforts to obtain habeas corpus in the court below and to secure timely review by certiorari in this Court. The truth of these charges cannot be finally determined on the present record. In view of *Ex parte Hull*, 312 U. S. 546 (1941), we feel constrained to call to the attention of the Court the facts alleged and what is offered in proof of the charges.

Delay on Petition for Certiorari.

One of the essential questions of fact in this case is whether petitioner was prevented from having access to the courts to appeal his original conviction in 1933. *Supra*, pp. 16-23. Of some interest, therefore, is the story of what happened to his petition for certiorari addressed to this Court in 1941 and what happened in his effort to obtain relief from the Federal District Court in Kansas after the Kansas Supreme Court had denied his application in the case at bar.

First, as to the petition for certiorari in the present case. The court below denied petitioner's application on June 7, 1941 (R. 59), and the final order on the rehearing motion was entered on July 3, 1941 (R. 72). On July 26, 1941 petitioner wrote to the Clerk of the United States Supreme Court stating that ten days earlier, on July 16, 1941, he had mailed his application for certiorari in the prison mails. On July 29, 1941 the Clerk of this Court replied that the

application had not been received. On August 1, 1941, petitioner again wrote to the Clerk of this Court and stated that he had learned (how he does not say) that the application for certiorari had not been forwarded to this Court but had been sent instead to the Pardon Attorney, Mr. Donald C. Allen, at Topeka, Kansas, and that Mr. Allen was still holding it almost two weeks after petitioner had placed it in the prison mails addressed to this Court. He asked that the Clerk of this Court require the surrender of these papers. On August 2, 1941, petitioner wrote to Pardon Attorney Allen asking that the papers be forwarded to the Clerk of this Court to whom he forwarded a copy of this letter.

About a week later, on August 8, 1941, petitioner again wrote to the Clerk of this Court stating that the Warden had written him that his petition was still being held by the State officials. Three days later, on August 11, 1941, he wrote again asking that the impounding of his certiorari papers be brought to the attention of the Attorney General and the Chief Justice.

Neither respondent's letter of August 1, 1941, enclosing a copy of his letter to the State Pardon Attorney which asked surrender of his certiorari papers, nor his letter of August 8th to this Court were received by the Clerk here until August 13th—a lapse of almost two weeks in the case of the first letter. Where these letters were in the meantime is not known. And on the very day that these delayed letters were received in the Clerk's office in this Court, that is, on August 13, 1941, the package containing the application for certiorari was also received,[54] a lapse of almost a month since petitioner says it was mailed.

Representation Concerning Certiorari Made To Kansas Federal District Court.

Following the denial of his application on June 7, 1941, in the State Supreme Court, petitioner applied to the United States District Court for Kansas for a writ of

[54] Each of the letters mentioned and the dates of receipt can be found in the Clerk's files, No. 510, October Term, 1941.

habeas corpus. On June 18, 1941, the Attorney General of Kansas moved that this application be dismissed

"for the reason that said petitioner has applied to the Supreme Court of the United States for a writ of certiorari" (Petition, page 29).[55]

On June 21, 1941 Judge Hopkins considered this motion and "upon proof offered" dismissed the application for habeas corpus. Although the Assistant Attorney General of Kansas appeared in the Federal Court on this motion, petitioner was not represented (Petition, page 30).

Just what proof was offered to forestall this application to the Federal Court of Kansas is not known. It is difficult to understand what it could have been on June 18, 1941. Petitioner says he did not put his petition in the prison mails until July 16, 1941, and we have seen it did not arrive here until August 13, 1941. Moreover, there is an original letter, attached to the petition for certiorari in this Court, from the Clerk of the Supreme Court of Kansas, dated July 1, 1941, which states that up to that date no notice of any kind had been filed indicating that petitioner would ask for certiorari (Petition, 31-32). Lastly, it was not until June 27th—nine days after State officials had represented that certiorari to the United States Supreme Court had been filed—that petitioner even moved for a rehearing in the Supreme Court of Kansas and renewed his request that his witnesses be subpoenaed (R. 63, 66). Not until July 3, 1941 was the order denying the rehearing entered by the Kansas Supreme Court.

Alleged Removal Of Documents From The Original Application For Habeas Corpus In The Court Below.

Both in his motion for rehearing in the court below (R. 63-64) and in his petition for certiorari (Pet. 6) in this Court, petitioner charges that certain of the documents attached to and supporting his application for habeas

[55] Petitioner's copy of the Motion to Dismiss and of the Journal Entry (Petition, pp. 29-30) has been compared with a certified copy from the Clerk of the District Court of the United States for the District of Kansas. It is accurate.

corpus had been removed by prison officials. On the present record it is not possible to determine with any finality whether these charges are true. With them the court below did not concern itself. There are, however, certain materials in the files of this Court which, though again resting entirely on petitioner's assertions, are consistent with and tend to support his claim. We mention two:

On August 30, 1941, after certiorari had been granted, petitioner forwarded to the Clerk of this Court copies of certain letters which he stated were part of the case and had never reached the court below. This undoubtedly referred to the charges in his motion for rehearing below and his petition for certiorari that parts of his application below had been removed. Among the letters so forwarded were copies of two documents which, if they are authentic and had been before the court below, would of themselves have been almost controlling on the question whether petitioner had attempted to appeal from his original conviction in 1933.

The first of these is a letter dated January 24, 1934—only six months after his commitment and well within the period in which appeal would have been possible—from the Warden to the State Prison Board

"enclosing herewith a petition C. H. Cochran wishes to have filed in the Supreme Court."

This letter bears the striking notice

"(Parole Attorney does not approve) Returned Jan. 27th 1934."

Although the letter mentions a "petition", petitioner states that it referred to his appeal papers (Petition, 32). Irrespective of what the returned documents were, this letter in and of itself might have established the existence of the blockade against him which petitioner alleges existed at the time.

The second letter which petitioner claims was removed from his original application and a copy of which he sent to the Clerk of this Court, is dated December 21, 1936 and

is addressed to petitioner by the State Parole Attorney. In this, the latter remarks that

"the board of administration did not prevent you from appealing your case to the Supreme court". (Petition, 33).

The significance of this letter—again if it is authentic and had been before the court below—is that it demonstrates that petitioner's claim that he had been prevented from appealing was being urged by him as early as 1936. It constitutes almost a complete answer to the suggestion of respondent in the court below that this basis for relief was first advanced in 1941 (R. 54), and corroborates petitioner's allegation that at the time of his 1935 application for habeas corpus he did know that the action of the Warden in forcibly preventing him from appealing his original conviction was illegal.

APPENDIX C.

Procedural Confusion in the Court Below.

In the present record there are numerous documents relating to petitioner's appeal from an order of the Kansas District Court which dismissed an application for habeas corpus filed on November 14, 1940, about two months before his original application in the Supreme Court of Kansas. Although we believe that the case at bar can be determined upon the record of the original application, upon which the Supreme Court of Kansas apparently based its decision, a brief review of these additional portions of the record seems warranted because it illuminates to some extent the peculiar course of consideration below of some of the questions of fact controlling the constitutional validity of petitioner's detention.

We grant that some, though by no means all, of this confusion of record results from petitioner's inartistic documents and undoubted lack of familiarity with appellate procedure. Nevertheless, where as in the court below, the applicant for habeas corpus is not represented by counsel and asserts, however inartistically, that his imprisonment is unconstitutional, we submit that the State Court should either appoint counsel for the applicant or that its clerks and other officers should be zealous in insuring that no

procedural disadvantages flow from the applicant's lack of knowledge as to proper procedure. Neither course appears to have been followed in this case. *Cf. Patterson* v. *Alabama*, 294 U. S. 600 (1935) (bill of exceptions filed too late); *Hale* v. *Kentucky*, 303 U. S. 613 (1938) (clerk's omission from record).

The record discloses that on December 11, 1940, the District Court of Leavenworth County, First District of the State of Kansas, entered an order denying petitioner's application for a writ of habeas corpus on the ground that the petition did not state facts sufficient to warrant issuance of the writ (R. 1-2). This petition had been filed on November 14, 1940 (R. 29), but its precise allegations are not disclosed. There is good reason to believe, however, that it contained substantially the same allegations as to prevention of appeal as those set forth in the original application filed on January 8, 1941 in the Supreme Court of Kansas. For the District Court Judge wrote a letter to the petitioner stating

"the matters you complain of should have been corrected by an appeal to the Supreme Court. I cannot re-try the case, and correct the errors you complain about" (R. 19).

Under Kansas practice (GEN. STAT. (Corrick, 1935) Secs. 60-3306, 07) an appeal to the Supreme Court is taken by filing a notice with the clerk of the trial court, serving a copy on the opposing party, and transmitting the notice with proof of service and a copy of the judgment or order appealed from to the Clerk of the Supreme Court. Petitioner filed a notice of appeal with the Clerk of the Kansas District Court on December 31, 1940 (R. 1), but for some unexplained reason this appeal was not formally filed in the Supreme Court of Kansas until June 2, 1941 (R. 2), five days before the final action of the Kansas Supreme Court (R. 59). Nevertheless, the appeal papers must have arrived in the Supreme Court almost three months earlier because, as already noted, on March 15, 1941, the Supreme Court of Kansas consolidated petitioner's appeal with his original application (R. 21). Instead of ordering a return by respondent, or issuing an order to show cause why the

writ should not issue,[56] the Supreme Court ordered both petitioner and respondent to file abstracts and briefs (R. 21).

Confronted with this order to file an "abstract", petitioner filed a document which substantially followed the verified Statement of Facts which had been appended to his original application, (*cf.* R. 7-13 with R. 23-29) but did so on the theory that this was the required appeal document.[58] He failed, however, to include a copy of his petition in the District Court upon the sufficiency of which the order denying his application had turned.

Respondent properly treated the consolidated case both as an original proceeding and an appeal. He filed a formal Return (R. 37) and captioned his Abstract and Brief both as "Respondent and Appellee" (R. 38).

In these circumstances it is interesting to observe that the Supreme Court of Kansas on May 5, 1941 made an entry in the consolidated case which recited that

"This cause comes on for hearing upon the appeal papers and the abstract of record from the district court of Leavenworth County and thereupon, said cause is submitted upon

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[56] See *In re Bundy*, 144 Kan. 64, 58 P. (2d) 80 (1936). In its opinion, however, the court below states that it "directed" respondent to file a return (R. 61) and a return was in fact filed.

[57] Under Kansas practice the procedure on appeal after an appeal has been docketed is for the appellant to prepare an abstract of the pleadings and of the evidence, usually in narrative form, and to file this with the court. KAN. GEN. STAT. (Corrick, 1935) Secs. 62-1704, 60-3306-10, as amended by Laws of Kansas, 1937, c. 274; Kansas Supreme Court Rules, Rule 5. It is also provided by court rules of the Supreme Court that in original cases in that court the pleadings and evidence are also abstracted unless the court otherwise orders. Nevertheless, the practice in habeas corpus seems to be to issue a show cause order or to order a return. *Cf. In re Bundy, supra.*

[58] That this is so is indicated by the subscription to the Abstract (R. 29) and by the document entitled "Abstract in Procedure of Appeal" (R. 29-30) and the accompanying brief (R. 30-36) in which he continually refers to himself as the "appellant". In the so-called Procedure Abstract petitioner states that "not being learned in court procedure, [he] may have been very informal in his petition and pleadings, but the entire petition, brief and statement of facts (Abstract) are correct in every detail" (R. 30).

the briefs of both parties and taken under advisement by the court" (R. 57).

Petitioner's "Objections to Procedure of Court", filed on May 10, 1941, have been noted (*supra*, p. 8).

In its opinion the court below stated that it considered the case as an original application for habeas corpus (R. 60). After noting that petitioner had filed the requisite notice of appeal and a copy of the judgment of the Kansas District Court, the court observed that

"Nothing further is filed respecting that appeal. The petition ruled upon by the district court is not before us. The appeal is therefore dismissed" (R. 63).

It is submitted that in view of the Court's own order of March 15, 1941 (R. 21) which had directed petitioner to file an appeal abstract, and since an examination of the record would have shown that the abstract filed was identical with the petitioner's Statement of Fact (R. 7) in the original proceeding, the action of the court below represents a confusion of form with substance. It may be assumed, however, that since it dismissed petitioner's original application, it would have affirmed the order dismissing the probably identical application in the Kansas lower court.

FILE COPY

No. 510.

In the Supreme Court

of the United States

OCTOBER TERM, 1941

C. H. COCHRAN, *Appellant*,

vs.

THE STATE OF KANSAS, and MILTON F. AMRINE, Warden of the Kansas State Penitentiary, *Appellee*.

Appeal from the Supreme Court of the State of Kansas

Motion to Dismiss and Brief in Support Thereof

MILTON F. AMRINE, Warden of the Kansas State Penitentiary,
By JAY S. PARKER, Attorney General of Kansas,
JAY KYLE, Asst. Att'y General of Kansas,
Attorneys for Appellee.

19-2892

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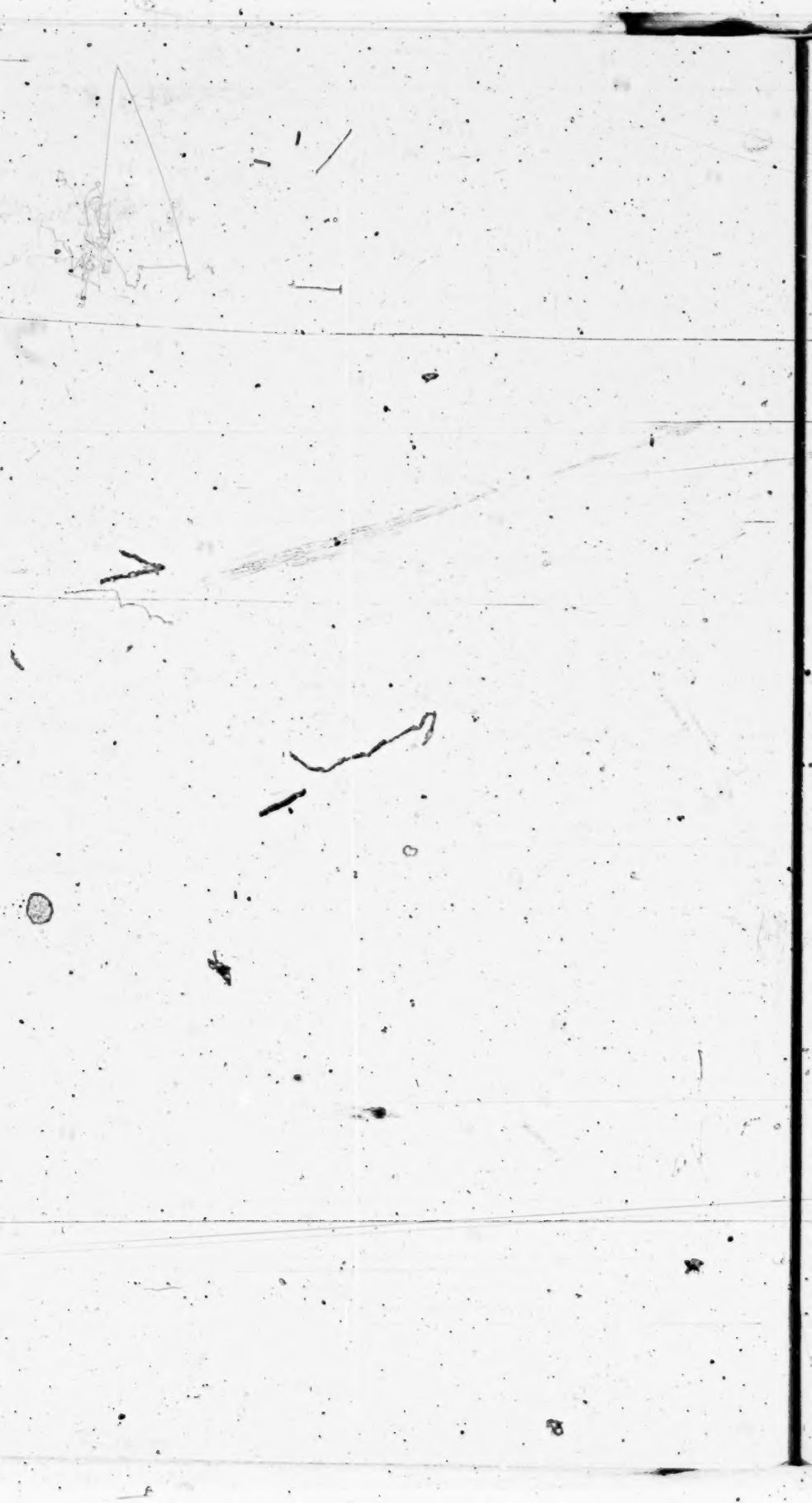

In the Supreme Court

of the United States

OCTOBER TERM, 1941

C. H. COCHRAN, *Appellant*,

vs.

THE STATE OF KANSAS and MILTON F. AMRINE, Warden of the Kansas State Penitentiary, *Appellee*.

No. 510

Appeal from the Supreme Court of the State of Kansas

Motion to Dismiss and Brief in Support Thereof

MOTION TO DISMISS

Comes now Milton F. Amrine, warden of the Kansas State Penitentiary, for and on behalf of the state of Kansas, and as warden of the Kansas State Penitentiary, appellee in the above-entitled cause, and moves the court to dismiss the appeal therefrom for the following reasons, to wit:

I

Because there is no substantial federal question involved in such appeal.

II

Because there has not been a compliance with Rule 38, paragraph 2, or with Rule 12, paragraph 1, of this court by the appellant.

MILTON F. AMRINE, Warden of the Kansas,
State Penitentiary,
By. JAY S. PARKER, Attorney General of Kansas,
JAY KYLE, Asst. Att'y General of Kansas,
Attorneys for Appellee.

BRIEF IN SUPPORT OF APPELLEE'S MOTION TO DISMISS APPEAL

The appellee filed motion to dismiss the appeal in the above-entitled cause under authority of Rule 12, paragraph 3, of the supreme court of the United States.

It is not the contention of the appellee that this court does not have jurisdiction to grant the writ of certiorari nor hear the appeal filed by the appellant in this case. The appellee's first contention is that the appeal should be dismissed because there is no substantial federal question involved.

U. S. Code, Ann., Title 28, sec. 344 (Judicial Code, sec. 237).

In order to present this brief in support of the motion to dismiss, it is considered necessary to briefly set out a concise and direct statement of facts, which has been carefully omitted in the petition for a writ of certiorari and brief in support thereof filed by the appellant in this action pursuant to Rule 38, paragraph 2, and Rule 12, paragraph 1, of this court.

C. H. Cochran, appellant herein, was charged in a complaint in writing filed before a justice of the peace in Sumner county, Kansas, in December, 1932, on one count of forgery on a described check, and a separate count with

uttering the same check in Sumner county, Kansas. A warrant, which was issued on this complaint, was delivered to the sheriff of Sumner county, Kansas, on April 12, 1933, who arrested the appellant in an adjoining county and returned him to Sumner county. On April 20, 1933, a preliminary examination was held before the justice of the peace, at which time appellant appeared in person and by his attorney, and being bound over for trial to the district court, an information was duly filed charging the same offenses charged in the warrant. The trial came regularly on for hearing in the district court of Sumner county, Kansas, on May 15, 1933; a verdict of guilty by the jury was returned upon the second count, and on May 20, 1933, the appellant's motion for a new trial and his motion for arrest of judgment were considered and overruled.

On May 29, 1933, following presentation of evidence by the county attorney, the district court of Sumner county found that the appellant had previously been convicted of two other separate and distinct felonies, and under the habitual criminal act of Kansas, was sentenced to life imprisonment in the Kansas State Penitentiary.

At all stages of the proceedings above narrated, from the date of the preliminary hearing to the sentence, in-

clusive, the appellant was present in person and with his counsel. No appeal was taken from the conviction and sentence and no appeals were taken from the denial of motion for a new trial and motion for arrest of judgment.

The appellant was incarcerated in the state penitentiary at Lansing on May 31, 1933. In October, 1935, the appellant filed a petition for a writ of habeas corpus in the supreme court of Kansas. The petition was considered and denied by the supreme court of Kansas in the case of *Cochran v. Simpson*, 143 Kan. 273, 53 P. 2d 502. Subsequently a second petition for writ of habeas corpus was filed in the Kansas supreme court, No. 33075, which was denied April 20, 1936, without a written opinion. Since then the appellant has filed several other applications for writs of habeas corpus, including two in the United States district court for the district of Kansas, one or more in the district court of Leavenworth county, Kansas, and has made applications of some nature to the district court of Sumner county, Kansas. The appellant filed a third application for a writ of habeas corpus in an original action in the supreme court of Kansas on January 8, 1941, and also filed a notice of appeal from a denial of an application for a writ from the district court of Leavenworth county, Kansas, on January 2, 1941. This

original application was considered and denied in the case of *Cochran v. Amrine*, 153 Kan. 777, 113 P. 2d 1048, and the appeal from the district court of Leavenworth county was dismissed in the same opinion for the reason that the appeal was not perfected. In this opinion the supreme court of Kansas took cognizance of the fact that the petitioner had filed many applications for various writs in several courts, including the first application which was filed before that tribunal in 1935 and reported in *Cochran v. Simpson*, supra. The grounds the appellant advanced in *Cochran v. Simpson*, supra, were not all identical with the ones in *Cochran v. Amrine*, supra, which is the basis of this appeal, although some of the allegations were repeated from the earlier case.

In the case of *Cochran v. Amrine*, supra, the Kansas court said in syl. 1:

> "While courts are liberal in entertaining petitions in habeas corpus proceedings, questions once fully considered and determined, in the absence of changed circumstances, should be regarded as settled."

and the second syllabus reads as follows:

> "The records of course are not set aside upon the unsupported statements of a defeated litigant."

The appellant alleged in his application in the case of *Cochran v. Amrine*, supra, that he had made some vague effort to appeal from his conviction and sentence from the district court of Sumner county, Kansas, in 1933. Neither the records of the district court of Sumner county, Kansas, nor the supreme court of the state of Kansas, nor the Kansas State Penitentiary sustained such allegations.

The supreme court of Kansas said in the case of *Cochran v. Amrine*, supra:

> "There is nothing in the record to indicate that the petitioner attempted to appeal his case to the supreme court. There is nothing in the record of the proceedings in the court below to indicate any irregularity in the petitioner's trial and conviction, and certainly nothing to indicate that his commitment was void for any reason. (p. 779.)

The court further said in this opinion:

> "Some of the questions sought to be raised in this proceeding were presented to the court at that time (*Cochran v. Simpson*, 143 Kan. 273, 53 P. 2d 502). All of them might have been and should have been presented in that proceeding. While a court should be liberal in entertaining habeas corpus proceedings, there is no reason to reconsider the same questions repeatedly. . . . No evidence has been offered to support these allegations other than the bare statement of the pe-

titioner. The records of the court are not set aside upon the unsupported statements of a defeated litigant." (p. 779.)

The appellee respectfully submits that such ruling is in full accord with the case of *Wong Doo v. United States*, 265 U. S. 239, which reads in part:

> "It therefore must be held that in this case the courts below erred in applying the inflexible doctrine of *res judicata*. But it does not follow that the judgment should be reversed; for it plainly appears that the situation was one where, according to a sound judicial discretion, controlling weight must have been given to the prior refusal. The only ground on which the order for deportation was assailed in the second petition had been set up in the first petition. The petitioner had full opportunity to offer proof of it at the hearing on the first petition; and, if he was intending to rely on that ground, good faith required that he produce the proof then. To reserve the proof for use in attempting to support a later petition, if the first failed, was to make an abusive use of the writ of habeas corpus. No reason for not presenting the proof at the outset is offered. . . . (p. 241.)

In the case of *Salinger v. Loisel*, 265 U. S. 224, this court laid down the following rule:

> "In practice the rules we here have outlined will accord to the writ of habeas corpus its recognized status as a privileged writ of freedom, and yet make against an abusive use of it. As a further

> safeguard against abuse the court, if not otherwise informed, may on receiving an application for the writ require the applicant to show whether he has made a prior application and, if so, what action was had on it." (p. 232.)

The appellee here is maintaining, and it is respectfully contended that the supreme court of Kansas adhered to the view that the appellant herein had had a full and complete hearing on his application for a writ of habeas corpus in the case of *Cochran v. Simpson*, supra, and that in accord with the opinion in the case of *Wong Doo v. United States*, supra, there was full opportunity to offer proof at the hearing on his first petition of the allegations which he has set up in subsequent applications for writs of habeas corpus. All of the allegations that were considered by the supreme court of Kansas in *Cochran v. Amrine*, supra, could have been presented and should have been presented in the first application filed before the supreme court of Kansas in 1935, which were considered in *Cochran v. Simpson*, supra.

It cannot be said that the appellant acted in good faith in omitting to present to the supreme court of Kansas grounds which he urged in 1941 as a basis for a writ of habeas corpus, while the same identical grounds were available in his first application made to this court in

1935. There has been no change in the circumstances which would have precluded a full and complete presentation of all of the grounds for a writ in 1935. The appellant simply was reserving proof for use in attempting to support a later petition if the earlier petitions failed. It is contended by the appellee that such is an abusive use of the writ of habeas corpus.

The appellee is not suggesting the doctrine of *res judicata*, but it is urged that no substantial federal question has been presented.

In *Zucht v. King*, 260 U. S. 174:

> "But although the validity of a law was formally drawn in question, it is our duty to decline jurisdiction whenever it appears that the constitutional question presented is not, and was not at the time of granting the writ, substantial in character." (176.)

The supreme court of Kansas, in the case of *Cochran v. Amrine*, supra, took cognizance of the fact that:

> "In addition to the cases in this court the petitioner has filed in the federal court two petitions for writ of habeas corpus, each of which was dismissed by the court because it failed to present a substantial federal question." (p. 779.)

It must be observed that no appeals were taken from the rulings of the federal court in both instances where the petitions for writ of habeas corpus were dismissed.

The appellee wishes to direct to the attention of this court that the appellant in his application for a writ of certiorari has departed from the record in setting out the reasons for the issuance of the writ. In the brief in support of the petition, allegations are made which are unsubstantiated by the record and which are false and erroneous.

The appellee respectfully contends that the decision of the Kansas supreme court, in the case of *Cochran v. Amrine*, supra, has fully covered the grounds sought to be raised as a basis for the application, and that there is now no substantial federal question involved and the appeal should be dismissed.

MILTON F. AMRINE, Warden of the Kansas State Penitentiary,

By JAY S. PARKER, Attorney General of Kansas,

JAY KYLE, Asst. Att'y General of Kansas,

Attorneys for Appellee.

19-2892

No. 510

In the Supreme Court

of the United States

OCTOBER TERM, 1941

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Appeal from the Supreme Court of the State of Kansas.

BRIEF OF APPELLEES

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In the Supreme Court of the United States.

October Term, 1941.

C. H. COCHRAN, *Appellant*,

vs.

THE STATE OF KANSAS and MILTON F. AMRINE, Warden of the Kansas State Penitentiary, *Appellees*.

No. 510

Appeal from the Supreme Court of the State of Kansas.

BRIEF OF APPELLEES

STATEMENT

C. H. Cochran, appellant herein, was charged in a complaint in writing filed before a justice of the peace in Sumner county, Kansas, in December, 1932, on one count of forgery on a described check, and a separate count with uttering the same check in Sumner county, Kansas. A warrant, which was issued on this complaint, was delivered to the sheriff of Sumner county, Kansas, on April 12, 1933, who arrested the appellant in an adjoining county and returned him to Sumner county. On

April 20, 1933, a preliminary examination was held before the justice of the peace, at which time appellant appeared in person and by his attorney, and being bound over for trial to the district court, an information was duly filed charging the same offenses charged in the warrant. The trial came regularly on for hearing in the district court of Sumner county, Kansas, on May 15, 1933; a verdict of guilty by the jury was returned upon the second count, and on May 20, 1933, the appellant's motion for a new trial and his motion for arrest of judgment were considered and overruled.

On May 29, 1933, following presentation of evidence by the county attorney, the district court of Sumner county found that the appellant had previously been convicted of two other separate and distinct felonies, and under the habitual criminal act of Kansas, was sentenced to life imprisonment in the Kansas State Penitentiary.

At all stages of the proceedings above narrated, from the date of the preliminary hearing to the sentence, inclusive, the appellant was present in person and with his counsel. No appeal was taken from the conviction and sentence and no appeals were taken from the denial of motion for a new trial and motion for arrest of judgment.

The appellant was incarcerated in the state penitentiary at Lansing on May 31, 1933. In October, 1935, the appellant filed a petition for a writ of habeas corpus in the supreme court of Kansas. The petition was considered and denied by the supreme court of Kansas in the case of *Cochran v. Simpson,* 143 Kan. 273, 53 P. 2d 502. Subsequently a second petition for writ of habeas corpus was filed in the Kansas supreme court, No. 33075, which was denied April 20, 1936, without a written opinion. Since then the appellant has filed several other applications for writs of habeas corpus, including two in the United States district court for the district of Kansas, one or more in the district court of Leavenworth county, Kansas, and has made applications of some nature to the district court of Sumner county, Kansas. The appellant filed a third application for a writ of habeas corpus in an original action in the supreme court of Kansas on January 8, 1941, and also filed a notice of appeal from a denial of an application for a writ from the district court of Leavenworth county, Kansas, on January 2, 1941. This original application was considered and denied in the case of *Cochran v. Amrine,* 153 Kan. 777, 113 P. 2d 1048, and the appeal from the district court of Leavenworth county was dismissed in

the same opinion for the reason that the appeal was not perfected.

On the application for the writ of habeas corpus filed January 8, 1941, which is the basis of this appeal, the appellant set out in generalities the grounds for the issuance of the writ, numbering seven. At the beginning of each one of the seven grounds the appellant uses the phraseology, "The record shows that," (R. 2, 3, 4) and throughout the application, which was followed by the petitioner's so-called statement of facts and abstract (R. 7) were certain statements which were not corroborated, relating to the sequence of events. Following the original application and subsequent order of consolidation of an appeal from a denial of a writ of habeas corpus from the district court of Leavenworth county, Kansas, the respondent filed return (R. 37) pursuant to the direction of the supreme court of Kansas. In this return was set up the authority for the detention of the appellant by the appellee, Milton F. Amrine, as warden of the Kansas State Penitentiary, which included certified copies of the commitment to the state penitentiary, criminal action sentence, information, journal entry of judgment, a letter from the County Attorney of Sumner county, Kansas, directed to Mr. Kirk Prather, the warden

of the Kansas State Penitentiary, and copy of the appellant's record of the Federal Bureau of Investigation.

QUESTIONS PRESENTED

In appellant's brief there are six questions proposed for consideration by this court. We cannot agree that all of the six questions should be considered, and we wish in the following argument to outline our reasons for this viewpoint. We think that the three questions involved in this controversy, is (1) whether the appellant *was* denied the right to appeal from his conviction and sentence to the Kansas State Penitentiary by wardens thereof, their employees, or others connected with the state of Kansas, and (2) whether in the trial court of Sumner county, Kansas, this appellant was denied the right to subpoena witnesses, and (3) to testify in his own behalf. Summed up, these are questions of fact which were for determination in the supreme court of Kansas. The burden of proof to sustain the allegations alleged in the application was upon the appellant. We respectfully maintain that the appellant failed to establish proof as to the allegations contained in his application, hence denial by the writ of the supreme court of Kansas.

SUMMARY OF ARGUMENT

The first question propounded on behalf of appellant is:

> "Whether the action of prison wardens and other state officials in forcibly preventing petitioner from pursuing criminal appeal afforded by state statute until after time for such appeal had expired was in violation of the equal protection clause of the fourteenth amendment."

That question in itself is unfair and presumptive. The appellees herein admit that if such question was fairly presented and such facts as alleged by the appellant were disclosed as being true before the supreme court of Kansas, there would be no question but that there was a violation of the equal protection clause of the Fourteenth amendment, and further, answering the second question presented, the appellees concede that if there was such discriminatory action, it would be a denial of the constitutional right guaranteed by the fourteenth amendment and that the commitment under which the appellant is held would be void.

The third question is whether the denial to the defendant in a criminal prosecution of the use of compulsory process for witnesses in his defense is a violation of the due process clause of the fourteenth amendment.

Obviously again we realize that in such denial would be a violation of the due process clause of the fourteenth amendment; and likewise, as to the fourth question presented, that if there had been a denial to a defendant in a criminal prosecution of the right upon his so requesting, to testify in his own defense, it too would be a violation of the due process clause of the fourteenth amendment.

The fifth question presented on behalf of the appellant is whether the factual determination of the court below has any support in the record. That will be discussed further in this brief as well as the sixth question which is presented, whether the court below erred in refusing to afford petitioner an opportunity to prove the issues of fact controlling the constitutional validity of his detention. We think ample opportunity was afforded the appellant to make his showing, which he failed to do.

In the original application (R. 2, 3, 4) the appellant alleged in setting out his seven points for sustaining his contention, using the phraseology in the beginning of each one of these seven grounds, "The record shows that," and thereafter set out his grievances. It would indicate that he was attempting to rely upon some record or records as competent evidence to prove that he

had been denied the right to appeal, to subpoena witnesses in his behalf and to testify himself personally at his trial. What these records were, to which he made constant reference is not known—and that can only be presumed—but the contention of the appellees is that it could only be records of courts of competent jurisdiction, records of the State Penitentiary at Lansing, or possibly records of the State Board of Administration, which has jurisdiction of the state penitentiary. He offered nothing in the trial court and there was no record presented to the supreme court of Kansas to confirm to any degree the contention of the appellant in the court below.

ARGUMENT

The appellant complained that *the record shows* that the duly authorized officials and prison officials exercised unlawful authority by "suppressing your petitioner's appeal documents in a manner violative of their lawful duty and contrary to the statutes of the state of Kansas, to thwart, obstruct and deprive your petitioner of his lawful rights of appeal." (R. 3.) And likewise to the same effect the petitioner, in the application said:

> "The records show that your petitioner, after incarceration, was arbitrarily denied by prison rules and the arbitrary acts of the officials of his

> lawful rights of his appeal and was denied the right to secure a transcript from the trial court, arbitrarily denying hearings of his appeal in the supreme court of the state of Kansas, and denied him the right to file his record case in the supreme court of the state of Kansas by E. M. Stubblefield, deputy warden, Lacy M. Simpson, warden, who, the records show, refused your petitioner to mail abstract and brief to the supreme court, and arbitrarily suspended habeas corpus." (R. 3.)

Such statements are erroneous and are absolutely unsubstantiated by any record, whether it is the records of the supreme court of Kansas, the district court of Sumner county, Kansas, the district court of Leavenworth county, Kansas, or the records of the Kansas State Penitentiary at Lansing.

The supreme court of Kansas, in *Cochran v. Amrine*, supra, filed June 7, 1941, which is the basis of this appeal, set out that the petitioner alleged that the commitment issued out of the district court of Sumner county, Kansas, auhorizing his imprisonment for life and was void for the following reasons:

> "The record shows (1) jurisdiction of the court to issue the commitment was procured through the reckless contrivance in the pretense of a trial which, in and by itself, deprived your petitioner of every right secured to him by the state and federal constitution and precluded . . . "Due

> Process of Law."' (2) That the court went beyond the bounds of judicial discretion in overruling his motion without a hearing. (3) That the duly authorized officers unlawfully suppressed his appeal. (4) That after his imprisonment the then warden and other officers of the prison suppressed and refused to permit him to mail documents pertaining to an appeal and to habeas corpus. That the records will show (1) that he has consistently been deprived of due process of law by the courts and the officers and agents of the state; (2) that his previous petitions have been dismissed by the courts of the state, without recourse to the record, upon the unfounded assumption the record shows his conviction by an orderly trial within the requirements of due process of law, and (3) that the officers and agents of the state are exercising unlawful authority over your petitioner, obtained by methods contrary to due process of law." (R. 60.)

The court took cognizance of the generalities in which the appellant complained of his detention because of the commitment issued out of the district court of Sumner county on May 29, 1933. The supreme court of Kansas was most generous in its opinion when it said:

> "All these allegations are made in the most general terms, void of any specifically alleged, controvertible facts; yet, (fol. 82) in order that petitioner might not be deprived of any of his rights, we waived our rules respecting a deposit for costs and the printing of abstract and brief, allowed the

petition to be filed, and directed respondent to file a return. Respondent has prepared and filed his return which includes pertinent records of the trial, and a copy thereof was served upon the petitioner, who now complains that the records have been brought before the court; also, briefs have been filed by both parties.

Except in one particular, later to be noted, the record shows none of the facts alleged by the petitioner." (R. 61.)

The appellant, throughout his application, had continued to make references to what the *records* would show. The respondent in the court below produced certified copies of the record in the district court of Sumner county, Kansas, the authority for which was the detention of the petitioner by the warden of the state penitentiary. To controvert this showing, the appellant produced very little. It might be fair to say that he produced something, which evidently the supreme court of Kansas did not weigh with much credibility. Made a part of his application were so-called statement of facts (R. 7) which were unsubstantiated, and also attached thereto were three affidavits, one by Mrs. E. L. Hinton (R. 17), one by Frank Boaz (R. 17) and one by C. C. Crebs (R. 18). The latter two are inmates of the Kansas State Penitentiary, serving life terms and both have

repeatedly filed applications for writ of habeas corpus in various courts. The affidavit of Crebs states that "on or about the 15th day of May, 1933, C. H. Cochran asked me to offer correction to errors, if any, in his appeal documents." The record discloses that the appellant was not incarcerated in the Kansas State Penitentiary until May 31, 1933. (R. 53.)

The appellant complains in his brief:

> "Viewed in the light of the federal questions raised by petitioner, the opinion of the court below does not indicate the basis for its decision on the question where forcibly preventing petitioner from exercising right of appeal, was the denial of equal protection. The court apparently refused to accept petitioner's affidavit and offer of proof on the theory that his failure to include this ground in his herein application for habeas corpus destroyed his credibility."

Then the opinion in the case of *Cochran v. Amrine*, supra, was quoted in appellant's brief, which read:

> "There is nothing in the record to indicate that the petitioner attempted to appeal his case to the supreme court." (R. 2.)

Obviously, again appellant had emphasized in his application to that court that the *record* would show that all of his allegations were true and the appellees herein produced the record, which did not uphold the fabulous

allegations made by the appellant in his original application. On the other hand, the supreme court of Kansas said in its opinion, as cited above, that the petitioner upon the return of the respondent now complains "that the records have been brought before the court." The journal entry of judgment from the district court of Sumner county, Kansas, which the supreme court of Kansas had before it as part of the respondent's return, and which has not been controverted by the appellant herein.—Incidentally, the journal entry was approved by the attorney for the appellant in the trial court.—There is no evidence that the appellant filed praecipe for summons of any witnesses; there is nothing in the record to indicate that the appellant was denied the right to testify on his own behalf, but the journal entry does recite:

> "A jury is duly and legally empaneled and sworn to try the case. The opening statement is made, the plaintiff's witnesses are sworn and testify and evidence introduced and the state rests. Defendant's opening statement is made (fol. 60), evidence introduced and the defendant rests. The jury is instructed in writing and argument of counsel made and the jury retires in charge of the sworn bailiff to deliberate." (R. 45.)

That was on May 15, 1933, five days later, a hearing was had upon a motion for a new trial, at which time

counsel and appellant were present. (R. 45.) Likewise, on the same day the motion in arrest of judgment was heard and argued, which motion was overruled by the court. (R. 46.) The record speaks for itself in that the appellant was not denied the right to file a motion for a new trial and motion in arrest of judgment. What restraining influences would have prevented his having filed notice of appeal at this particular time, which is the prevailing practice in most courts.

Nine days later, May 29, 1933, judgment and sentence were passed, at which time the defendant was present as well as was his counsel. Evidence was offered that the defendant had been convicted of two prior felonies and that the defendant was a habitual criminal. The journal entry recites:

> "Whereupon, inquiry is made of the defendant if he has any legal cause to show why judgment and sentence should not be pronounced against him upon the findings of the jury, and there appeared no legal cause." (R. 46.)

Thereupon judgment was passed by the district judge of Sumner county and the journal entry of trial was approved by the attorney for the defendant as well as by the county attorney. There is nothing in this record to indicate an intention or effort to appeal.

The appellant asserts in his brief that certain affidavits were removed from the original application and withheld from the court, and filed a motion to subpoena witnesses twenty days after the court's opinion was handed down which would testify in support of his application. It must be recalled that in the application originally filed, this appellant was stressing to the supreme court of Kansas that the *records* show that he was deprived of his constitutional guaranties; that the trial court abused its discretion by overruling the petitioner's motion in the court or without any hearing at all (R. 3), and further, the record shows that "the prison officials had exercised their authority in denying the appellant the right to appeal" (R. 3), and that the records would show "that he was denied by prison rules, and the arbitrary acts of the officials of his lawful right of his appeal and was denied the right to secure a transcript from the trial court." (R. 3.) Each and every allegation made by the appellant in the original application is unsubstantiated by any semblance of a record. While on the other hand, the appellees supplied the supreme court of Kansas in the return with certified copies of the records from a court of competent jurisdiction relating to the case at bar.

In the summary of argument in the brief of the appellant it is contended that there were specifically three bases for asserting that the detention of the appellant was constitutionally invalid. First, that the acts of the prison wardens and other state officials in forcibly and discriminatorily preventing appellant from appealing his original conviction within the time in which an appeal could be filed, was a denial of the equal protection of the laws.

Upon what to base that as a fact is not clear to the appellees. The appellant started out on the premise that he was going to produce records or show by competent evidence that he was denied the right to appeal. The only evidence produced were the statements of the appellant himself, two other inmates of the state prison and an unknown woman. Evidently the supreme court took cognizance of the record produced by the appellee and gave it the greater weight of credibility than the evidence offered by appellant.

The second contention in the summary of argument proposed by the appellant is "That denying him the right to compulsory process to secure witnesses for his defense at the trial was a deprivation of due process." If the appellant had been deprived of the right of com-

pulsory process to secure witnesses for his defense, the appellee would readily admit that it was a denial of due process, but the appellant has not supported this allegation with any evidence. Again he has alluded to the fact as to what the *record* would show. There is no showing that any praecipe of witnesses was filed or request made to the court.

Likewise to the same effect is the third ground that is argued in the summary of argument, and that is "That preventing him from taking the stand to testify in his own behalf when he requested to do so was also a deprivation of due process." Not one offering of evidence was made on this point for consideration by the supreme court of Kansas other than the bare allegation of the appellant. As stated before, the attorneys for the appellant approved the journal entry of judgment, and as pointed out in the affidavit of the county attorney of Sumner county:

> "Affiant further states that the defendant was present at all times during the trial, except that he was not present with the jury during their deliberations and that he was present within the courtroom and represented by his attorney at the time the motion for a new trial and motion for arrest of judgment were argued and heard, and overruled by the court, all as appears in the jour-

nal entry hereinabove mentioned and referred to and full faith and credit should be given herein to the official acts of the district court of Sumner county, Kansas." (R. 51.)

The appellant in his brief attempts to give strength to the statement that he was ignorant of his constitutional rights. That, of course, is a stock explanation. The appellant has had a long career of crime. As a matter of fact, most of his life he has been in difficulty with society and he is not in the position of a first-time offender. The appellant was convicted of a felony by a jury in a court of competent jurisdiction, and being found to be an habitual criminal, was sentenced to the state penitentiary for life. To infer that he did not know of his right of appeal or possibly had not been apprised of such by his attorney, is a species of a rare imagination.

The appellant has endeavored through various courts and the state parole board to procure his release from the state prison. He was filed numerous applications, as set out, and *only* in this instant case has he presented the thought that he was denied the right to appeal. We are not suggesting the doctrine of *res judicata*, but we are submitting that the burden of proof rests squarely upon the appellant to prove his grounds for release

through habeas corpus. This appellant started out in his original application to show by the *record*, but the record has been produced and there is not one shadow to sustain his argument that he was denied the right of appeal or denied the right to testify in his own behalf in the criminal action, or denied the right to subpoena witnesses for his defense. No discrimination has been shown by the prison officials or court attaches in the denial of the right of appeal.

The statutes of Kansas, G. S. 1935, 62-1704, provide: "The appeal must be taken within two years after the judgment is rendered."

This appellant had two full years in which to perfect his appeal. In all that time he was not heard to complain, nor did he file one document indicating his intention to appeal from his conviction and commitment. Subsequently he filed numerous applications for writ of habeas corpus in the supreme court of Kansas, the United State district court for the district of Kansas, and in some of the district courts of Kansas, but never previously made reference to an appeal.

In this case he alleges he was denied the right to appeal, and sets out that the *records* will show that he was denied the right to appeal by prison rules, arbitrary acts

of public officials and that the prison officials suppressed his appeal documents, which in effect was denying his right to appeal. All this he is going to prove by the *records*. (R. 2, 3, 4.) Instead, he offers his own statements and three affidavits, two of which are those of convicts, for the consideration of the court below, on this very important allegation.

It is not the question of the right of appeal that is herein presented, but the question of whether that right was denied by the state or its employees. The burden of proof is upon the appellant to show this by competent evidence. The supreme court of Kansas examined the pleadings and the evidence and evidently came to the conclusion that the allegations of the appellant were far fetched and were unsupported.

The Supreme Court said:

> "No evidence has been offered to support these allegations other than the bare statement of the petitioner. The records of courts are not set aside upon the unsupported statements of a defeated litigant." (R. 63.)

The argument of the appellant in saying that the statement of the supreme court of Kansas in its opinion, which said: "There is nothing in the record to indicate the petitioner attempted to appeal his case." (R. 62.)—

"was a conclusion, not only without substantial basis upon the record; it is also palpably erroneous." We suggest that the appellant cite *any portion of the record* that substantiates his contention that there is anything in the record to indicate an appeal was attempted. The substance of it is purely the appellant's complaint. The district court of Sumner county is a court of competent jurisdiction and a court of record. Most certainly its record should not be discarded or eliminated merely by the statement of an individual serving a life sentence in the state penitentiary.

The appellant in his brief alludes to the fact that evidently the supreme court of Kansas based its final determination that on an earlier application, *Cochran v. Simpson*, supra, petitioner had not raised the important angle that he was denied the right of appeal. Again it must be directed to the attention of this court that the supreme court of Kansas did consider and evidently weigh the record supplied in the return by the respondent as against the affidavits of the appellant and his associates in the state penitentiary. As said before, that was a matter for the determination by the supreme court of Kansas and in the application for the writ the appellant continually alluded to the fact that the *records*

would show effectively that the petitioner was denied the right to appeal, the right to subpoena witnesses and the right to testify in his own behalf at his trial. Obviously the records do not disclose any truth to these allegations.

The appellant attempts to give strength to his own affidavit and to those he filed, signed by two inmates of the state penitentiary, and one Mrs. E. L. Hinton. In the latter this woman alleges she was given written consent of the "power of attorney," but it must be noted that her visit to the state penitentiary was in June, 1934, whereas the affidavits of the two inmates of the penitentiary were a year previous. The "power of attorney" to act could not be denied by the warden or any employees of the state penitentiary. The right to act as an attorney in the courts of Kansas is passed upon by the courts themselves and not by state employees. No effort was made following this so-called conveyance of "power of attorney" to file any pleadings or motions in any district court or the supreme court of Kansas. No reference is made in the Hinton affidavit as to a contemplated appeal. She only refers to "papers," which can be construed as meaningless and which certainly cannot by any interpretation be determined as a notice of appeal.

The appellant makes light, that following the filing of these affidavits to which the respondent made a subsequent return setting up the authority for the detention of the appellant, that no affidavits or statements were offered in evidence from the prison authorities. It must be pointed out that the administration of the state penitentiary of Kansas changes frequently, and since Warden Simpson and Deputy Warden Stubblefield were officers in charge of that institution there have been two other administrations. The affairs of the state penitentiary are handled through rules, regulations and records. To substantiate his allegations, the appellant has offered no rules or regulations which prohibit him from filing his appeal, or any other records which would uphold his contention. The officials of the state penitentiary of Kansas deal with many prisoners; many, the warden and deputy do not come in contact with. Obviously these officials do not and cannot by independent recollection, even if they were available, recount their many transactions with the various prisoners in the institution. The appellees must rely upon the records of the courts of competent jurisdiction and other evidence in the defense of such litigation involving reckless charges. The appellant has offered no evidence from any state official or em-

ployee supporting his allegations in the least, but has banked his chances on affidavits by other inmates who too are desiring release from the state penitentiary and an unknown woman.

The appellant in his brief relates:

> "The court grants that during the entire period in which the time for appeal was running, the prison officials refused to permit inmates of the jail to file petitions for habeas corpus."

That statement is error. The court did say in its opinion:

> "Soon after the petitioner was confined in the penitentiary he made some effort to file a habeas corpus petition. Under rules then prevailing at the penitentiary, these were not permitted to be sent out, and this much of the allegations of the petition in this case has some basis. These rules did not prevail long, however, and in October, 1935, he filed a petition for habeas corpus in this court. That was duly considered and a carefully prepared opinion was filed, denying the petition." (*Cochran v. Simpson*, 143 Kan. 273, 53 P. 2d 502.) (R. 62.)

There is no evidence or no admission that the right of appeal was denied and it is admitted that for a short time the prison authorities did not permit inmates of the state penitentiary to file the applications for writs of habeas corpus, *which they themselves prepared.* How-

ever, this appellant did not complain about this situation, nor did he allude to this grievance in his petition filed in the supreme court of Kansas in October, 1935, that he had been denied the right of appeal and that he had been denied the right to subpoena witnesses in his own behalf, nor had he been denied the right to testify at his own trial. Caustically, perhaps, but the appellant did not "discover" the invasion of these important constitutional rights until years later. The appellant in his brief goes further and says:

> "It is difficult to believe they would not have practiced the same ruthless disregard of an inmate's statutory rights and thwarted his attempt to send out appeal documents."

This is pure unwarranted speculation, because there is no evidence other than the appellant's weak showing that the prison authorities were denying inmates the right to appeal. Moreover, the Kansas cases are full of criminal appeals in that era of time. To permit an inmate of a state penal institution—a hardened criminal, so to speak—to offer allegations which are lacking substantiation by any record, to attempt to disprove or condemn public officials in bringing up scandalous allegations, is not only dangerous, but most certainly affects the morale of law enforcement. The courts of Kansas

have been generous and patient in entertaining various pleadings and requests of inmates of the penal institution and have permitted inmates of the state penitentiary to file various documents with their defects, omissions and irregularities, contrary to the general practice by members of the bar.

The contention of the appellant in his brief, because of the application which the appellant made to the supreme court of Kansas that "both respondent and the court below concluded that petitioner's evidence should be rejected," is a careless assumption without merit. The appellee met the issues squarely and when issues were joined they were submitted to the supreme court of Kansas for its adjudication. (R. 57.) What credence the supreme court of Kansas may have given to the allegations, affidavits of appellant and his so-called "offer of proof" and, on the other hand, accorded the return of the respondent for the detention of the appellant is best reflected in the opinion of that court in the case of *Cochran v. Amrine*, supra.

The appellant directs the attention of the court to the case of *Johnson v. Zerbst*, 304 U. S. 458, and suggests that the case at bar is no different from that adverted to. We have no complaint with the rule of law laid down in

that case, but we submit it is far fetched to endeavor to apply it to the present one. In that case the question arose as to the denial of assistance of counsel for the defense of the individual, and whether there had been an intelligent waiver of that constitutional right. In this case there is no allegation that there was denial of counsel by the trial court of the appellant in his defense, but, moreover, the appellant as the defendant in the trial court was represented throughout all stages of the proceedings by competent counsel.

There is no analogy, likewise, between the case of *Smith v. O'Grady*, 312 U. S. 329, to which the appellant has referred, wherein the prisoner who was without counsel, was under the misapprehension that he was entering a plea to a lesser crime upon the representation of the prosecuting attorney that he would serve a sentence less than the one to which he was sentenced. In the case at bar the appellant had had a preliminary hearing; had the information read to him; was represented by counsel and was not under any misapprehension as to the seriousness of the charges against him, nor was there any allegation that the county attorney had made any misrepresentations as to the punishment. Moreover, the record presented is clear as to what tran-

spired and it is inconceivable as to how the appellant would try to make the case of *Smith v. O'Grady*, supra, analogous to this case.

Another case which is directed to the attention of this court by the appellant is *Chambers v. Florida*, 309 U. S. 227. The question involved there was an entirely different set of facts than the one presented here. In that case the findings were as they pertained to the trial court, that the prisoners were kept under heavy guard.

> "So far as appears the prisoners at no time during the week were permitted to see or confer with counsel or a single friend or relative." (p. 231.)

This court said in Syllabus 3:

> "The confessions of murder procured by repeated inquisitions of prisoners without friends or counselors present, and under circumstances calculated to inspire terror, held compulsory."

No such allegation is made in this case that this appellant was forced to confess to the crime with which he was charged, or that he was without friends or counselors. On the other hand this appellant in the trial court was found guilty by a jury and was represented by counsel of his own choosing. It must be pointed out also that no allegation has been made by the appellant that he was held incommunicado or that he was not per-

mitted to see friends and counselors. Moreover, the record clearly discloses that he had the advice of counsel and further in the preliminary his bond was set at $1,000, and there is no charge that that amount was excessive.

The case of *Mooney v. Holohan*, 294 U. S. 103, is another case on which the appellant relies, but it must be again emphasized that the case at bar and *Mooney v. Holohan*, supra, are in no sense identical or comparable. In that case this Court found that a criminal conviction was procured by the state prosecuting authorities by the use of perjured testimony known by them to be perjured. The court in that case held that such procedure was without due process of law and in violation of the fourteenth amendment. To that view we subscribe, but we respectfully submit that it has no bearing on or similarity to the grievance of the appellant herein. This court said in that case:

> "Such a contrivance by a state to procure the conviction and imprisonment of a defendant is inconsistent with the rudamentary demands of justice, as is the obtaining of a like result by intimidation, and the action of prosecuting officials on behalf of the state, like that of administrative officers in the execution of its laws, may institute state action within the purview of the fourteenth amendment." (pp. 112, 113.)

The arguments advanced in that case by the state of California do not coincide with the ones herein presented. There is no comparison between that line of cases than with this one. In this case the defendant in a criminal action, after conviction and sentence, failed to appeal from his conviction, to the supreme court of the state within the statutory period of two years. Years later, after he has had numerous applications for various writs in the several courts of the state of Kansas and the United States, and has applied for executive clemency on many other grounds, he concocts the idea that he was denied the right of appeal by certain state officers and that he was denied the right to testify on behalf of himself in the district court of Sumner county, Kansas, and was denied the right to subpoena witnesses on his own behalf, all of which we respectfully insist are groundless.

As to the latter two, he has not submitted one scintilla of evidence to sustain his position except his own statements, but moreover, the records offered by the appellees on the return, show that throughout all stages of the proceedings about which he complains, he was represented by counsel and there is no record offered or produced which tends to suport his contention. As to the former, that he was denied the right of appeal and his

vague expression that he was not aware of his constitutional rights, despite the fact that he has constantly, for years, been in difficulties with the law, and despite the fact he had a competent counsel in the trial court, he overlooked and failed in previous applications to set out these three significant grounds, all of which were important and substantial grounds for a release through habeas corpus. It must be pointed out also that in the first application for writ of habeas corpus which was heard in the United States district court of Kansas, before Hon. John Pollock, United States district judge, this appellant had counsel. He makes no contention that he was denied the right of counsel. Many other cases cited, including the case of *Hebert v. Louisana*, 272 U. S. 312, it is respectfully contended have no semblance to the instant case.

The case of *Brown v. Mississippi*, 297 U. S. 278, is not in point because the facts have no similarity. In that case a confession of murder was shown to be extorted by state officers through torture. No confession is here involved and no torture is alleged. The appellant in the trial court pleaded not guilty to the felony charges. He was tried by a jury and found guilty, filed a motion for a new trial and a motion for arrest of judg-

ment. From that time the records reveal he did nothing relative to an appeal.

The appellant has another erroneous viewpoint and it is set out in his brief, and that is that he is continually referring to the fact that he is a poor man and should have the same right to courts as do all other citizens. To that view we adhere, but we want to direct the attention of this court to the fact that in the many applications which he has filed, in every instance he has proceeded *in forma pauperis*. The courts, penitentiary officials, court attachés and others have been generous in accepting the various pleadings of this appellant, in assisting him to get his pleadings before the court, in permitting him to file applications and other documents without the court deposits. He has written volumes of material to the various supreme court justices of Kansas, United States district judges, the district judge who sentenced him, the clerk of the Kansas supreme court, the attorney general, and many others. He fails to recognize that the state penitentiary is a penal institution and by necessity there are orders and rules relating to discipline and other matters pertaining to the conduction of its affairs. Quite naturally a man incarcerated in the state penitentiary cannot present material to a

court or to other persons on the outside without censorship. Quite true, the facilities to one incarcerated in a state penal institution are not nearly so accessible as to others. However, it is respectfully contended that the state of Kansas, its wardens, its courts, its agents and employees have been most generous respecting the rights of the convicts of its state penal institution, and the avalanche of applications for various writs and correspondence which this appellant has directed to the courts, their officers, attachés and many others should most certainly be emphasis that the supreme court of Kansas has been liberal in entertaining such cases as this one.

The supreme court of Kansas, as it has been said before, took cognizance of the fact that the grievance of this appellant was based largely on his own bare allegations. Possibly it did not give much credit to the fact that he submitted three affidavits, two from life-term convicts in the state penitentiary and a third from an unknown woman. No records from any court of competent jurisdiction or any rules or regulations, or any other records which were in effect at the state penitentiary were offered on behalf of the appellant. Moreover, the state of Kansas offered the records of a court of competent jurisdiction in which this appellant was

represented by counsel; offered the affidavit of a county attorney covering various phases of the charges made against the district court of Sumner county, Kansas, all of which evidently the supreme court of Kansas gave greater credence, as a matter of fact.

The appellant cites the case of *Boykin v. Huff*, 121 F. 2d 865, as sustaining the viewpoint of the appellant. Again, in that case there was a positive showing that the petitioner had made an effort to appeal by the direction of letters to the court. No such showing has been made and proven here.

The practice in Kansas relating to appeals to the supreme court from a district court is provided in G. S. 1935, 62-1701, *et seq.* It provides that the appeal by the defendant is a matter of right and also that the appellate procedure shall be the same as in civil cases. It further provides that the appeal must be taken within two years after judgment is rendered. G. S. 1935, 62-1704.

The Kansas statute, G. S. 1935, 60-3306, provides that notice shall be filed with the clerk of the trial court; a copy must be served personally on the adverse party and then notice with proof of service and a copy of the judgment and order appealed from must be directed to

the clerk of the supreme court. This the appellant failed to do. The appellant was found guilty by the jury in the district court of Sumner county on May 15, 1933. On May 20, 1933, his motion for a new trial and motion in arrest of judgment were denied. On May 29, 1933, the judgment and sentence was pronounced by the district court of Sumner county. His counsel was present with him at all times, as disclosed by the journal entry. Two days later, May 31, 1933, the appellant was transported to the state penitentiary at Lansing. Obviously he filed no notice of appeal at that time, nor is there any indication that his attorney was denied the right to file notice of appeal, nor is there any evidence that he was denied the right to communicate with his attorney, relatives or friends, nor is there any proof offered that in the two years following the pronouncement of judgment and sentence, he was denied the right to see visitors, including members of his family, friends or his counsel. There is no allegation that he was prohibited from filing notice of appeal immediately after judgment and sentence, which is the customary practice in the state courts of Kansas. There is no allegation that immediately after pronouncement of judgment and sentence, and before he was transported to the peni-

tentiary, that he was denied visitation by his attorney, relatives or friends.

In the affidavit filed by Mrs. E. L. Hinton (R. 17), she declares that Cochran gave her the power of attorney to act in his behalf in the supreme court of Kansas; to file and execute all transactions in that court. It has been shown that if a notice of appeal was to be filed, it must be filed in the district court of Sumner county, Kansas; copy must be served on the adverse party and proof of service and a copy of the judgment and order must be then directed to the clerk of the supreme court of Kansas. Mrs. Hinton does not say in her affidavit that she possessed any notice of appeal or any documents relating to an appeal. She only says that the deputy warden "forbade me to take out any more papers belonging to C. H. Cochran." (R. 17.) What these papers might have been was never disclosed by the affidavit. Evidently the Kansas supreme court did not accept the view that it was a notice of appeal to be filed in the trial court under statutory provisions, as above cited.

The appellant relates in the so-called "statement of facts" (R. 10):

> "Your petitioner ask the defense counsel to give notice of appeal. Motion argued, if argued at all, in the absence of your petitioner. (Later another notice was sent to the trial court of which no receipt was received.)"

There is nothing in the record of the district court of Sumner county to sustain this allegation. There is no proof offered that the petitioner ever made the request of his counsel to file notice of appeal or that he ever directed a notice of appeal to the trial court. The complaint was his own, to which apparently the supreme court of Kansas did not give much credibility.

The appellant further alleged in his so-called statement of facts (R. 10):

> "The petitioner then wrote and moved the trial court to reopen the case of State of Kansas v. Cochran on the discovery of new evidence to which the court never acknowledge the receipt of the motion. Copies of the original affidavit was confiscated. The State set about to block and forcibly restrain your petitioner from filing his appeal. Your petitioner ask that he be permitted to secure his transcript. This was denied by the State authorized officials and agents and by the prison rules. The time your petitioner's appeal limit had expired and under similar restraint your petitioner was denied the right to file a petition for writ of habeas corpus. Eventually the petition was filed in an unusual way, this petition was

> No. 32802, setting up several questions on the trial of your petitioner. This petition was denied by the state supreme court without so much as any kind of a hearing, and was arbitrarily denied and a decision was written without any lawful defense in the said case."

This allegation by the appellant is unsustained by competent evidence and the petition No. 32802 to which he refers is reported in the Kansas Reports in the case of *Cochran v. Simpson*, supra. Later, as the appellant alleges, the supreme court of Kansas asked the attorney general to make informal investigation of the complaint (R. 10), which was done and a copy was filed with the supreme court. Reference is made to that investigation in the appellee's brief in the supreme court of Kansas. (R. 55.)

The appellant, while it is a trivial matter, complains that the latest appeal which the appellant filed from the district court of Leavenworth county in the Kansas supreme court, which appeal was filed with the clerk of the district court of Leavenworth county and not the Kansas district court, December 31, 1940, but for some unexplained reason was not formally filed in the supreme court of Kansas until June 2, 1941. However, the appellant is somewhat inconsistent because he acknowl-

edges the fact in his brief that the appeal was consolidated on March 15, 1941, by the supreme court of Kansas with the original application which the petitioner had filed on January 8, 1941. The appellant just failed to set out that following his notice of appeal filed December 31, 1941, and the original application filed January 8, 1941, he failed to comply with the rules of the Kansas supreme court by advancing court deposit for both cases. He also failed to set out in his record that through the generosity of the clerk of the Kansas supreme court, a letter was directed to this appellant suggesting that he should comply with certain rules of the supreme court, giving the numbers, which included dockting both the appeal and original application on poverty affidavit, thereby relieving him of the costs. This he did and in due time both the appeal and the original application were consolidated and docketed.

The appeal from the judgment of the district court of Leavenworth county was dismissed because the supreme court of Kansas took cognizance of the fact that "Nothing further is filed respecting that appeal. The petition ruled upon by the district court is not before us. The appeal is therefore dismissed." (R. 63.)

In the brief of the appellant, it is said:

> "Instead of ordering a return by respondent or issuing order to show cause why the writ should not issue, the supreme court ordered both petitioner and respondent to file abstracts and briefs."

Obviously that is an error and a misstatement, because the supreme court of Kansas did require the respondent to file a return, which is shown in the record. (R. 37-54.) In addition thereto, the respondent filed a brief in support of the return. (R. 54.) However, the appellant in his brief, under the heading of "Respondent's Return," makes reference to the same.

The supreme court of Kansas had the obligation to weigh the evidence and to judge its credibility. It also determined questions of law. There is no showing that the appellant offered, other than the three affidavits previously referred to, any evidence except his own statements. He offered no competent evidence that would substantiate his own viewpoint, such as the records of the district court of Sumner county, Kansas, records and rules of the Kansas State Penitentiary, reports of his grievance or complaints to the State Board of Administration, which is the Parole Board for Kansas, nor is there any proof that this appellant addressed

his grievances to any authorities which would be competent evidence to show that he had been denied this constitutional right of appeal from his conviction. Seven years elapsed from the time of his commitment to the state penitentiary until he cooked up the idea of denial of the right of appeal. The appellant simply failed or neglected to appeal. The various grounds upon which he has sought his release from the state penitentiary through court action and by executive clemency have been numerous and varied. There has been a total lack of consistency on the part of the appellant in the various and many applications upon which he has sought his release from the state penitentiary. It must be stated that no evidence is offered that any other inmate of the Kansas state penitentiary was denied the right of appeal. The appellant sets up that the warden and others tried to set up a "perpetual blockade" against him. True enough, they have opposed his release from the state penitentiary, but not through methods of which he now complains.

This appellant has written volumes to members of the courts in Kansas and their attachés, to case workers, to the Board of Administration and its parole attorney, to the attorney general of the state and many others. This

appellant does not contend or maintain that in the two years which were within the statutory time for his appeal following his incarceration in the state penitentiary in May, 1933, that he was deprived of communicating with friends on the outside of the penitentiary or of having visitors at the regular prison visiting hours. He does not set up that he was denied the privilege of communicating with his own attorney, but he does suggest fanciful stories which he has not proven. His own statements, of which the Kansas state supreme court took cognizance evidently in its discretion in not granting the release of the prisoner from the custody of the appellee, were not proven. Perhaps the supreme court of Kansas, in determining questions of fact, gave greater credence to the records of a court of competent jurisdiction and to the affidavit of the county attorney as against the wild allegations of the appellant and the two affidavits of fellow convicts and an unknown woman, one of which was made alleging that the appellant had complained to him on or about the 15th day of May, 1933, that the appellant asked him to offer corrections to his appeal papers when in reality the appellant had not at that time actually been sentenced to the state penitentiary. The affidavit of the woman in itself is not clear,

but is an affidavit of generalities and does not make any reference to any efforts to appeal on behalf of the appellant.

These, appellant is insisting, should be the reasons why he should be released from the Kansas State Penitentiary, against the competent evidence offered on behalf of the appellees.

CONCLUSION

The appellees respectfully contend that the burden of proof on an application for a writ of habeas corpus is upon the petitioner to prove his allegations by competent evidence. This in the instant case has not been done by the appellant.

The appellees further contend that commitments to a state penitentiary from a court of competent jurisdiction should not be set aside merely upon the allegations of a defeated litigant. The failure or neglect to appeal from the conviction of a felony is not a ground for release through habeas corpus. It is essential that a petitioner prove any allegations respecting the violation of his constitutional rights by competent evidence, and not by allegations in generalities. The appellees herein have set out the record as the authority for the detention of

the appellant in the state penitentiary of Kansas. The record was presented to the supreme court of Kansas and in its discretion it did not find as a matter of fact that the allegations of the appellant were sustained, but, moreover, that there was ample authority for the detention by the appellees of the appellant, who had been convicted and sentenced to the state penitentiary as an habitual criminal.

It is respectfully urged that the supreme court of Kansas in the instant case was correct in its rulings as to matters of fact and matters of law and that the allegations in the original application filed herein are unsubstantiated and without foundation.

Therefore it is respectfully urged that the judgment of the supreme court of Kansas should be upheld and the application for writ of habeas corpus be denied.

Respectfully submitted,

JAY S. PARKER,
Attorney General of Kansas,
JAY KYLE,
Assistant Attorney General of Kansas,
Attorneys for Appellees.

SUPREME COURT OF THE UNITED STATES.

No. 510.—October Term, 1941.

C. H. Cochran, Petitioner,
vs.
The State of Kansas and Milton F. Amrine, Warden, Kansas State Penitentiary.

On Writ of Certiorari to the Supreme Court of the State of Kansas.

[May 11, 1942.]

Mr. Justice Black delivered the opinion of the Court.

In 1933, the petitioner Cochran was convicted by a jury in a Kansas state court upon a charge of passing a $12.60 check with knowledge that it was forged. His motion for a new trial was overruled. Upon a finding that Cochran had previously been convicted of two other felonies the court sentenced him to life imprisonment as an habitual criminal pursuant to a Kansas statute. Kan. Gen. Stat. (Corrick, 1935) Sec. 21-107a. Two days later he was sent to the state penitentiary where he has since been confined.

In January, 1941, Cochran acting in his own behalf filed an original application for habeas corpus in the Supreme Court of Kansas. His application sets out the allegations, among others, that the trial judge had denied him the right to summon witnesses and to testify on his own behalf; and that officials of the state penitentiary enforcing prison rules there in effect had suppressed appeal documents he had prepared, thereby making it impossible for him to perfect an appeal during the two year period allowed by Kansas statute. The State filed a return containing a certified copy of the information on which Cochran was tried, journal entries of the trial, an order overruling Cochran's motion for a new trial, and the judgment and sentence.

The Kansas Supreme Court denied the writ, stating that "the records of courts are not set aside upon the unsupported statements of a defeated litigant." 153 Kan. 777. We accept the court's conclusion that the record, showing that Cochran was represented by counsel throughout, and revealing on its face no irreg-

ularities in the trial, is sufficient refutation of his unsupported charge that he was denied the right to summon witnesses and testify for himself.

But the allegations that prison officials frustrated Cochran's efforts to perfect an appeal are a different matter. Since these allegations relate to a period subsequent to Cochran's commitment, and since that is the latest event referred to in the record, the record itself affords no refutation. Nor are these allegations denied in any other part of the State's answer. Moreover, the opinion of the court itself recognizes that these allegations had "some basis", pointing out that "under rules . . . prevailing at the penitentiary" for some time following Cochran's commitment he was prevented from sending out a petition for habeas corpus, and that it was not until October, 1935, (after the time for appeal had expired) that such a petition was actually filed. On the other hand, nothing in the opinion indicates that the court denied the application on the ground that it had canvassed the allegations and supporting affidavits of Cochran and three others pertaining to suppression of appeal and had concluded that they were untrue.

Cochran's application for habeas corpus does not bear the name of counsel. Not a lawyer, he apparently prepared it himself. On the issue of denial of opportunity to perfect an appeal, he alleged that the "record shows that the duly authorized officers and prison officials exercised unlawful authority by surpressing your petitioners appeal documents", *etc.* In its brief and argument before us, the State has contended that the word "record" can refer only to the trial record set out in its return to Cochran's application. Since that record does not show the alleged suppression, it is urged that Cochran's application was properly denied because wholly unsupported. As we have pointed out, the record of the trial court proceedings, relating as it did to a period ending with Cochran's commitment, could prove nothing with respect to independent subsequent events. Hence, to place the construction urged by the State on the word "record" as used by Cochran would not merely impute to him a technical precision which his application as a whole contradicts; it would render the application entirely meaningless.

The State properly concedes that if the alleged facts pertaining to suppression of Cochran's appeal "were disclosed as being true

before the supreme court of Kansas, there would be no question but that there was a violation of the equal protection clause of the Fourteenth amendment." And in Kansas, habeas corpus is recognized as affording a remedy for a person held in prison in violation of a right guaranteed by the Federal Constitution.[1] However inept Cochran's choice of words, he has set out allegations supported by affidavits and nowhere denied that Kansas refused him privileges of appeal which it afforded to others. Since no determination of the verity of these allegations appears to have been made, the cause must be remanded for further proceedings.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[1] See *e. g.* In re Jarvis, 66 Kan. 329. Cf. Smith v. O'Grady, 312 U. S. 329.